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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 511

THE PUEBLO OF SANTA ROSA, PETITIONER,

vs.

ALBERT B. FALL, SECRETARY OF THE INTERIOR,
AND WILLIAM SPRY, COMMISSIONER OF THE
GENERAL LAND OFFICE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 11, 1926

CERTIORARI GRANTED OCTOBER 25, 1926

(82,078)

(32,078)

SUPREME COURT OF THE UNITED STATES

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Court of Appeals of the District of Columbia.

No. 4298.

THE PUEBLO OF SANTA ROSA, Appellant,
vs.

ALBERT B. FALL, Secretary of the Interior, et al.

Supreme Court of the District of Columbia.

In Equity.

No. 33201.

THE PUEBLO OF SANTA ROSA, Plaintiff,
against

FRANKLIN KNIGHT LANE, Secretary of the Interior, and CLAY TALLMAN, Commissioner of the General Land Office, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill of Complaint.

Filed January 28, 1915.

In the Supreme Court of the District of Columbia.

In Equity.

33201.

THE PUEBLO OF SANTA ROSA, Plaintiff,
against

FRANKLIN KNIGHT LANE, Secretary of the Interior, and CLAY TALLMAN, Commissioner of the General Land Office, Defendants.

To the Supreme Court of the District of Columbia:

The plaintiff states as follows on information and belief:

I. The plaintiff, the Pueblo of Santa Rosa, is and from time immemorial has been a town known by the common name of Pueblo

of Santa Rosa and consisting of civilized, sedentary, agricultural and pastoral inhabitants who are and from time immemorial have been Pueblo Indians known by that name and living in permanent houses of substantial construction in a village, of fixed and permanent location, built upon lands within the present County of Pima, State of Arizona, granted and conceded to said Indian pueblo by the laws and customs of the Indians antedating the Spanish discovery of America and also by the laws of Spain and Mexico, said lands being within the territory ceded to the United States by the Gadsden Treaty, and to whom, as constituting said pueblo, said laws and customs conceded certain privileges and lands, to be used for the common benefit of the town and its inhabitants.

2 The inhabitants of said pueblo live and from time immemorial have continuously lived together in communal life in said town community known as the Pueblo of Santa Rosa. They govern and from time immemorial have governed themselves and their town community in accordance with definite laws and customs having the force of law and in their public and private affairs they obey and from time immemorial have obeyed said laws and customs and the lawful orders of officials elected by them in accordance with said laws and customs. They at regular intervals assemble and from time immemorial have assembled together in common council composed of the adult male inhabitants of the town and at said councils have resolved all matters concerning the town community and its inhabitants by rules and decisions having the force of law. They have from time immemorial maintained a high degree of civilization as compared with the wild or savage Indian tribes and have been peaceable except when attacked by savage tribes and have always defeated the attacks of such savage tribes and have never made war on white settlers or resisted established government and have cultivated and utilized the lands of their town community with much intelligence, skill and industry.

The inhabitants of said pueblo were at the time of the Gadsden Treaty citizens of Mexico with large civil and political rights, and said inhabitants are now citizens of the United States and of the State of Arizona and reside in said pueblo of Santa Rosa, in said County of Pima and State of Arizona.

The laws and customs of the Indians and also the laws of Spain and of Mexico at all times conceded to the plaintiff, and the plaintiff claims and exercises, and from time immemorial has claimed

3 and exercised, (1) the right to have a common name, to wit, the Pueblo of Santa Rosa, and (2) the right and power to take, hold, manage, control, and dispose of real and personal property, including the land upon which its said village is situated and the surrounding lands, and (3) the right and power to contract and otherwise act as an entity by resolutions passed in common councils composed of its adult male inhabitants, and through its officers and representatives, in all matters concerning its interests, property and affairs, and (4) the right and power to have perpetual succession, and (5) the right and power to sue and be sued as an entity and to appear and act as such before courts and governmental authorities,

and (6) the right and power to maintain a permanent town organization and government, and to make, at common councils of its inhabitants, rules and laws binding upon the pueblo and its inhabitants, and to be controlled and managed by its inhabitants acting together according to law and according to rules so made, and to elect and keep in office captains, alcaldes and other town officers exercising much power and jurisdiction over said pueblo and its property and inhabitants for their common benefit and for the maintenance of order, the preservation of its property, the promotion of its interests and the conduct of its affairs.

By reason of the facts above mentioned the plaintiff is and from time immemorial has been, under the laws of Spain and Mexico and of the United States, an entity in fact and in law and a juridical person entitled to sue as such.

The plaintiff is and from time immemorial has been an Indian town community and one of many pueblo Indian town communities situated within the present and former territory of Mexico,

4 which in character, organization and activity have been and are similar to the plaintiff and which existed as pueblo Indian towns at the time of the Spanish discovery of America and at all times since and which are and at all times have been known and designated in Spanish as pueblos de indios or Indian pueblos.

The plaintiff brings this suit in its own right.

II. The defendant, Franklin Knight Lane, is a citizen of the United States and a resident of the District of Columbia, and at the time of filing this bill was and now is duly appointed, qualified and acting as Secretary of the Interior of the United States of America, and as such is charged with the administration of the laws relating to public lands, and is sued as Secretary of the Interior of the United States of America. The defendant Clay Tallman is a citizen of the United States and a resident of the District of Columbia, and at the time of filing this bill was and now is duly appointed, qualified and acting as Commissioner of the General Land Office of the United States of America, and as such is charged with the administration, under the Secretary of the Interior, of the laws relating to public lands, and is sued as Commissioner of the General Land Office of the United States of America.

III. From time immemorial and since before the first explorations of the Spanish discoverers and for more than three hundred years prior to the time of bringing this action, the Pueblo of Santa Rosa has owned and actually possessed and occupied all of that certain definite tract or parcel of land situate in Pima County in the State of Arizona, which land includes the village where the inhabitants of said pueblo reside and is bounded and described as follows: Commencing at a point or place known as Kabitque or Mountain Logia plain; thence running south a distance of twenty-four miles more or less to a point or place known as Okama or Okomo; thence running west a distance of twenty-four miles more or less to a point or place known as Mescalero; thence running north a distance of thirty miles more or less to a point or place known as Sierra Cabeza; thence running east a distance of thirty miles more

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or less to the point or place of beginning; and containing an area of seven hundred and twenty square miles more or less. All of said tract of land has continuously during all of said period been exclusively and actually occupied and possessed by said pueblo of Santa Rosa under open and notorious claim of right and absolute ownership, and said pueblo and its inhabitants have during all of this period occupied and utilized all of said land for the purposes of agriculture and grazing, and have resided thereupon. The actual boundaries above set forth of said land have from time immemorial been definitely fixed, known and recognized, and are marked by definite and recognized natural monuments, and the ownership, possession, use and occupation of said land by said pueblo and its inhabitants, for the purposes of agriculture and of raising and grazing cattle, of building dwellings and other permanent structures and for all other purposes, have always been coterminous with said boundaries.

IV. Spain during all the period of its sovereignty over the territory including the land herein described at all times recognized and in no instance disputed the ownership of said lands by
6 the Pueblo of Santa Rosa and by repeated royal orders and decrees, recognized the Papago Indians and the inhabitants of said pueblo as free vassals of the Spanish Crown, entitled to all the protection in their property rights which was accorded to Spanish subjects, and recognized and confirmed the ownership of plaintiff in said lands. After the establishment of its sovereignty, Mexico recognized and never disputed the ownership of the land herein described by the Pueblo of Santa Rosa, and during all of the period of Mexican sovereignty the Papago Indians and the inhabitants of the Pueblo of Santa Rosa were Mexican citizens and entitled to and actually enjoyed property rights and all other rights identical with those of all other citizens of Mexico. Under the laws of Spain and Mexico the distinction was clearly recognized and established between savage Indians or indios barbaros, and peaceable Indians living in fixed abodes in permanent communities and subsisting by agriculture and grazing, known as indios de los pueblos or pueblo Indians.

V. The land hereinabove described is situate within the boundaries of the territory ceded by Mexico to the United States under what is known as the "Gadsden Purchase," and in accordance with the treaty made at the time of said purchase and known as the "Gadsden Treaty," and in accordance with the express terms of the treaty known as the Treaty of Guadalupe Hildago, all property rights of Mexican citizens were agreed to be inviolably respected by the United States. By the terms of said treaties the Papago Indians
7 and the inhabitants of the Pueblo of Santa Rosa were entitled to become and actually became citizens of the United States. The said citizens of the Pueblo of Santa Rosa, in accordance with the provisions of said treaties, exercised the right given them thereby and elected to become citizens of the United States and they remained in the United States for the period desig-

nated by said treaties and did not declare their intention to retain the character of Mexican citizens.

VI. At the time of the acquisition from Mexico by the United States of sovereignty over the territory comprising said land and at the time of the making of said treaties the said pueblo of Santa Rosa was the absolute owner with complete, perfect and undefeasible title to the land herein described against all governments and individuals and all the world, except such rights as pertained to the inhabitants of said pueblo as members thereof, and since said change of sovereignty this perfect title and ownership has continued to exist and now exists. The inhabitants of said pueblo of Santa Rosa ever since said change of sovereignty have been and now are actually in possession, use and occupation of all of said lands except in so far as recently they have been wrongfully disturbed in said use and occupation by trespassers without color of right or title as hereinafter set forth. By the terms of the treaties hereinabove mentioned, the ownership of its lands by said pueblo of Santa Rosa was forever guaranteed and secured to it by the United States.

VII. Contrary to the rights of the plaintiff, officers and agents of the Department of the Interior and of the Land Office, acting under and in accordance with the instructions of the defendants, have heretofore unlawfully offered and now are offering for entry as part of the public domain of the United States all of the land hereinbefore described. Said defendants and their officers and agents acting under them, have heretofore granted pretended patents to third parties, covering portions of said land belonging to the Pueblo of Santa Rosa, and the defendants and their officers and agents acting under them are now threatening to issue other pretended patents to other parties, to portions of said land. The defendants and the officers and agents acting under them have repeatedly trespassed upon the said lands belonging to the Pueblo of Santa Rosa and are now threatening to continue said trespasses repeatedly and continuously, and are now threatening to enter upon said land within the boundaries thereof and there to make surveys, under the claim that said lands are a portion of the public domain of the United States and are the property of the United States and not of the Pueblo of Santa Rosa. The defendants and the officers and agents acting under them have caused to be published and circulated and are now publishing and circulating and threaten and intend to continue to publish and circulate maps purporting to be official maps of the Department of the Interior, showing that the said lands belonging to the Pueblo of Santa Rosa are part of the public domain of the United States and not owned by the Pueblo of Santa Rosa. The acts hereinbefore complained of, will throw a cloud upon the title of the plaintiff to the land aforesaid, and will cause many persons to attempt to settle upon the said land and enter the same in the Land Department of the United States, and the plaintiff will be unable to remove such persons without a great multiplicity of suits.

VIII. By the Act of Congress of June 20, 1910, for the admission of New Mexico and Arizona as states, the United

States granted to the State of Arizona for various purposes more than 2,000,000 acres and provided that the lands so granted should be selected under the direction and subject to the approval of the Secretary of the Interior from public lands of the United States within the limits of Arizona by a commission of state officers, and that for the purpose of such selection, the State might procure United States public lands within its boundaries to be surveyed in the manner prescribed by the Act of Congress approved August 18, 1894, which Act was extended to Arizona and provided that from the lands surveyed upon application of the State, the State could select and appropriate to itself the lands granted to it within sixty days after the filing of plats of surveys in the district land office of the United States pursuant to that statute. In order to procure such survey and to enable itself to select and appropriate to itself as a part of the lands so granted to it, all or a part of the lands belonging to the plaintiff as above described, the State of Arizona has under said last named Act applied to the defendant, Clay Tallman, Commissioner of the General Land Office, for the survey of certain land in Arizona, including all said land belonging to the plaintiff. Said application has been granted by the defendants; and the defendants for the purpose of enabling and aiding the State of Arizona to select and appropriate to itself all or a part of the lands covered by said application including all or a part of the plaintiff's lands have reserved the lands covered by said application including the plaintiff's lands for a limited time from

10 any appropriation other than the selection by the State, and on or about June 27th, 1913, authorized the Surveyor General of Arizona to immediately survey all said lands covered by said application, including the plaintiff's lands, for the purpose of enabling the State to make its selection and for the same purpose on or about September 5th, 1914, directed the said Surveyor General to immediately survey certain designated townships, including a part of the plaintiff's lands and on or about October 6th, 1914, advised the Governor of Arizona how the State should proceed in order to obtain said surveys and to enable itself to make said selections. Said Surveyor General of Arizona, acting under the instructions of the defendants, is now surveying or is about to survey all of the plaintiff's lands for the purpose of enabling the State to select and appropriate to itself all or a part of said lands and for that purpose the defendants are about to cause to be filed township maps of such surveys in the District Land Office of the United States in Arizona and to cause such District Land Office to receive and accept such surveys and thus to enable the State of Arizona as against these defendants and the United States to select and appropriate to itself all or any part of the lands covered by such surveys, including the lands of the plaintiff. The Governor and other officials of Arizona are about to take proceedings in pretended conformity with said Acts of Congress to procure the survey of said lands including the plaintiff's lands and to select or appropriate to itself all or a part of the plaintiff's lands, and the defendants are about to direct and approve said

selection and appropriation and to issue or approve the issuance to said State of patents from the United States covering all or
11 a part of the plaintiff's said lands in disregard of the plaintiff's rights and claims and thus to place a cloud upon the plaintiff's title to its said lands and to put the State of Arizona and its officials in possession of all or a part of the plaintiff's lands as ostensible owners thereof, all contrary to the protests of the plaintiff and in violation of its rights and to its great and irreparable damage.

By the act of Congress of February 19, 1909 known as the Enlarged Homestead Act, it was provided that in Arizona and elsewhere qualified persons may enter three hundred and twenty acres of non-mineral, non-irrigable, unreserved and unappropriated surveyed public lands not containing merchantable timber, provided said lands are first designated by the Secretary of the Interior as not being in his opinion susceptible of successful irrigation at a reasonable cost. By letters or orders dated respectively April 27, 1909 and May 1, 1909, the then Secretary of the Interior designated certain lands including all the lands hereinbefore described belonging to the plaintiff as being subject to entry under said Act and the defendants are causing to be exhibited to the public in the United States District Land Office in Phoenix, Arizona, tract books showing said designation and showing the lands belonging to the plaintiff as being open for entry and sale to settlers under said Act and caused the officials of the United States District Land Office at Phoenix, Arizona, to note upon the public tract books exhibited in said office, as against various townships including the townships comprised within the said lands belonging to the plaintiff words showing that the lands so noted are open to entry as and under proper conditions to allow entries of said lands by settlers. These defendants

12 are now causing to be published and circulated official maps of the Department of the Interior showing the lands belonging to the plaintiff as being open for entry and sale to settlers under said Act and have authorized and ordered surveys to be made of all or a part of said lands and are thus offering said lands to the public for entry and sale under said Act and making it possible for entries to be made thereon and placing a cloud upon the plaintiff's title to its said lands, all contrary to the protests of the plaintiff and in violation of its rights and to its great and irreparable damage.

IX. On or about May 18, 1914, the Pueblo of Santa Rosa, together with other Indian pueblos similarly situated, petitioned defendant Franklin Knight Lane, Secretary of the Interior, setting forth their grievances and various matters of fact and law alleged in this complaint, and prayed that these defendants and those acting under them should abstain from listing for entry or sale as part of the public domain of the United States any part of said parcel of land belonging to the plaintiff and from recommending the issuance of any patents covering any part of said land and from surveying or making allotment surveys within the boundaries thereof, and that all maps issued or exhibited as official maps by the defendants or those acting under them in the General Land Office or in any

District Land Office or in any other office under the direction and control of defendants, and all maps and diagrams contained in publications under the jurisdiction and control of defendants should be altered and corrected so as no longer to show said land as being

a part of the public domain, and other relief was prayed
13 for in accordance with the rights of the petitioners as set forth in said petition. Under date of June 11, 1914, the defendant Franklin Knight Lane replied to said petition, finally and definitely denying the said petitioners and the plaintiff all relief of any nature whatsoever, and thereby finally and definitely held, ruled and decided that the land herein described is not the property of the plaintiff but is the property of the United States and a part of the public domain thereof and is under the jurisdiction of the defendants, stating among other things that if the tenure of the holding of the Indians is not by grant emanating from the Government of Spain or Mexico, it is not such a property right as was provided for and protected by the treaty, and that the mere possession of the land as Indian country with the right of use, did not prevent it from passing under the dominion of the United States as public land, whatever the obligation of the United States to the Indians might be and that no claim was presented by the Indians with reference to the lands in question to the Surveyor General of Arizona under the Act of July 15, 1870, and that by the Act of March 3, 1891, a Court of Private Land Claims was created for the adjudication of all private land claims in Arizona and that no claim appeared to have been presented to said court by the Indians, although it is provided by Section 2 of said Act that any claim not presented to such court within two years from the date of the Act shall be deemed to be abandoned and shall be forever barred and that said court having expired by limitation of law on June 30th 1904, any claim that the Indians may have, can now be confirmed only by an Act of

Congress.

14 X. The plaintiff intends to proceed with all due diligence to enforce in law and equity its rights as the owner of all the lands hereinbefore described.

XI. The land hereinbefore described is of great value, and the value thereof exceeds the sum of One hundred thousand (\$100,000) Dollars.

XII. The plaintiff alleges that damages at law will be inadequate to remedy the injuries herein set forth and that it has no other adequate remedy at law, and that the acts hereinabove set forth constitute irreparable injuries, and accordingly and forasmuch as plaintiff is remediless and has no adequate remedy or relief except in a court of equity, and to the end, therefore, that the defendants may, if they can, show why the plaintiff should not have the relief prayed for, and may make full declaration and discovery of record of all the matters aforesaid and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under oath, answer under oath being hereby expressly waived, plaintiff prays:

First. That the defendants, their officers, subordinates, agents, employees and all those acting under them or by virtue of their instructions and authority be forever enjoined and restrained from offering for entry or listing for entry or sale as part of the public domain of the United States or otherwise any part or parts of said tract of land hereinbefore described, and from issuing or recommending the issuance of any patents, to individuals, the State of Arizona, or otherwise, covering any part of said tract or any interest therein

15 either for homestead, pre-emption, desert land purposes or minerals, whether placer or quartz, or for mill sites or for any other purpose or purposes; from making any survey or surveys within the boundaries of said parcel of land except for the purpose of separating and delimiting the said parcel from the public domain, in case said parcel shall adjoin at any point the public domain; from publishing or continuing the publication of any official maps showing said parcel of land or any portion thereof as belonging to the public domain and open for entry or the issuance of patents; from entering on the said parcel without the consent of the Town of Santa Rosa; from the establishment of a reservation or reservations upon the said parcel or any portion thereof, and from interfering in any way with the exercise by said Pueblo of Santa Rosa of its ownership and control over said parcel of land and from in any way attempting to exercise power or control over said land or any portion thereof.

Second. That the defendants, their officers, subordinates, agents, employees and all those acting under them or under their authority or control, be ordered and enjoined to correct, in so far as they may be in their possession or subject to their control, all maps by them issued as official documents and purporting to show the parcel of land herein described as being part of the public domain or the property of the United States so that said maps, as corrected, shall show said parcel of land to be private property and not the property of the United States nor a portion of the public domain; and finally, that the plaintiff shall have such other and further relief as to the court may seem just and equitable.

May it please the Court to grant to the plaintiff a writ of subpoena directed to the said defendants Franklin Knight Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the Land Office, commanding them on a day certain to appear and answer this complaint and to abide by and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

Dated October 29, 1914.

THE PUEBLO OF SANTA ROSA,
By HENRY P. BLAIR.

Attorney of Record.

ROUNDS, HATCH, DILLINGHAM &
DEBEVOISE,
CATES & ROBINSON,
HENRY P. BLAIR,

Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Henry P. Blair, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff herein; that he has read the foregoing amended bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason that this complaint is verified by him and not by the plaintiff is that the plaintiff is absent from the District of Columbia; that the sources of his information and the grounds of his belief are statements made and information given to him by associate counsel familiar with the facts.

HENRY P. BLAIR.

Sworn to and subscribed before me this 30th day of November, 1914.

[SEAL.]

ARTHUR HELLEN,
Notary Public, D. C.

17

Spa. to Answer.

Issued January 28, 1915.

* * * * *

The President of the United States to 1, Franklin Knight Lane, Secretary of the Interior, & 2, Clay Tallman, Commissioner of the General Land Office, defendants:

You are hereby commanded to appear in this Court on or before the tenth day, exclusive of Sundays and legal holidays, after the day of the service of this subpoena upon you and answer the exigency of the Bill, under pain of attachment and such other process of contempt as the Court shall award; and if your appearance in this suit be not entered in the Clerk's Office within said time the bill may be taken for confessed.

Witness the Honorable J. Harry Covington, Chief Justice of said Court, the 28 day of Jan., A. D. 1915.

[SEAL.]

JOHN R. YOUNG,
Clerk,

By F. E. CUNNINGHAM,
Assistant Clerk.

H. P. BLAIR,
Attorney.

Marshal's Return.

Served copy of within on defendants personally Jany. 28, 1915.

MAURICE SPLAIN,
Marshal.

C. R. S.

Order for Appearance.

Filed January 29, 1915.

* * * * *

The Clerk of said Court will enter our appearance for the defendants.

PRESTON C. WEST,
C. EDWARD WRIGHT,
Attorneys for Defts.

18

Motion to Dismiss.

Filed February 20, 1915.

* * * * *

Come now the defendants in the above-entitled action, by their attorneys, and move to dismiss the plaintiff's bill; and for cause show:

(1) That the bill shows on its face no capacity in the plaintiff, styled as "The Pueblo of Santa Rosa," either to begin or maintain this or any other suit, "in its own right," or otherwise, in that the bill fails to show that the alleged "Pueblo" is a body politic incorporated or existing under the laws of the United States or the State or Arizona, or that it is under any law a body politic and corporate, with power to institute and maintain actions at law or suits in equity.

(2) That, as appears in and by the bill exhibited herein and from well-known facts and laws of which the court will take judicial notice, there is no such thing as a "Pueblo" in law existing in the State of Arizona, with the right to hold or own property, with the privilege to sue or be sued, or to institute or maintain in its alleged name or own right, any suit at law or in equity in any court; but, on the contrary, it appears that said "Pueblo" is merely a settlement of Indians under the tutelage and control of the United States, occupying public lands, the legal title to which is in the United States, by sufferance of said United States, and that said settlement of Indians is without legal entity or capacity to maintain this or any suit.

(3) That in and by the plaintiff's bill, no such title is shown in the so-called "Pueblo" as authorizes the institution and maintenance of any action or suit in the name of the "Pueblo of Santa Rosa" for the relief sought as to the lands mentioned and described in said bill.

(4) That the bill shows on its face that the lands involved were ceded to the United States by the republic of Mexico under the treaty of Mesilla (commonly known as the "Gadsden Purchase") and that legal title thereto is in the United States, the Indians

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merely occupying the land by sufferance of the United States; and that therefore the United States is a necessary party to the suit, but has not, in this behalf, consented to be sued.

(3) That the bill seeks to control the discretionary action of the defendants in matters exclusively within their jurisdiction under acts of Congress.

Wherefore they pray that the bill be dismissed with their reasonable costs, and that they be permitted to go hence without day.

FRANKLIN K. LANE,

Secretary of the Interior,

CLAY TALLMAN,

Commissioner of the General Land Office,

By Their Attorneys, PRESTON C. WEST,

Solicitor for the Department of the Interior.

C. EDWARD WRIGHT,

Assistant Attorney.

Opinion of Court.

Filed April 12, 1916.

* * * * *

This is a suit in equity brought by what is called the Pueblo of Santa Rosa against the present Secretary of the Interior and Commissioner of the General Land Office, and sweeping injunctive relief is sought, the first prayer of the bill asking that the defendants, their officers, subordinates, etc., be forever enjoined and restrained from doing a great many things that are outlined in the prayer, which concludes by asking that the injunction sought shall restrain the defendants "from interfering in any way with the exercise by said Pueblo of Santa Rosa of its ownership and control over" the lands described in the bill of complaint "and from in any way attempting to exercise power or control over said land or any portion thereof." By the second prayer of the bill, a mandatory injunction is sought against the defendants, their officers, etc., to require them to correct, in so far as they may be in their possession, or subject to their control, all maps by them issued as official documents and purporting to show the said parcel of land as being part of the public domain or the property of the United States, so that said maps as corrected shall show said land to be private property and not the property of the United States, nor a portion of the public domain; and there follows the prayer for general relief.

The defendants have filed a motion to dismiss the bill, which motion, under the new equity rules, takes the place of a demurrer. The grounds of the motion are as follows:

"(1) That the bill shows on its face no capacity in the plaintiff, styled as "The Pueblo of Santa Rosa," either to begin or maintain this or any other suit, "in its own right," or otherwise, in that the bill fails to show that the alleged "Pueblo" is a body politic incorporated or existing under the laws of the United States or the

State of Arizona, or that it is under any law a body politic and corporate, with power to institute and maintain actions at law or suits in equity.

"(2) That, as appears in and by the bill exhibited herein and from well-known facts and laws of which the court will take judicial notice, there is no such thing as a "Pueblo" in law existing in the State of Arizona, with the right to hold or own property, with the privilege to sue or be sued, or to institute or maintain in its

21 alleged name or own right, any suit at law or in equity in any court; but, on the contrary, it appears that said "Pueblo" is merely a settlement of Indians under the tutelage and control of the United States, occupying public lands, the legal title to which is in the United States, by sufferance of said United States, and that said settlement of Indians is without legal entity or capacity to maintain this or any suit.

"(3) That in and by the plaintiff's bill, no such title is shown in the so-called "Pueblo" as authorizes the institution and maintenance of any action or suit in the name of the "Pueblo of Santa Rosa" for the relief sought as to the lands mentioned and described in said bill.

"(4) That the bill shows on its face that the lands involved were ceded to the United States by the republic of Mexico under the treaty of Mesilla (commonly known as the "Gadsden Purchase") and that legal title thereto is in the United States, the Indians merely occupying the land by sufferance of the United States; and that therefore the United States is a necessary party to the suit, but has not, in this behalf, consented to be sued.

"(3) That the bill seeks to control the discretionary action of the defendants in matters exclusively within their jurisdiction under acts of Congress."

In order that the grounds of the motion may be fully apprehended, an analysis of the bill of complaint seems to be requisite.

The bill alleges that the plaintiff is, and from time immemorial has been, a town known by the common name of Pueblo of Santa Rosa, and that it is composed of civilized, sedentary, agricultural and pastoral inhabitants, who are, and from time immemorial have been, Pueblo Indians, known as such, and living in permanent houses in a village of fixed and permanent location, built upon the lands hereinafter described, which are said to be situated within the present County of Pima, in the State of Arizona, which lands have been granted and conceded to said Pueblo "by the laws and customs of the Indians antedating the Spanish discovery of America, and also by the laws of Spain and Mexico," these lands being within the territory ceded to the United States by the Gadsden treaty.

22 It is further alleged that the inhabitants of said Pueblo have lived, and continue to live, in communal life in said Pueblo; that they govern, and from time immemorial have governed, themselves and their community, in accordance with definite laws, and customs having the force of law, which have always been obeyed by the inhabitants; that at regular intervals they assemble

in common council, composed of the adult male inhabitants of the Pueblo, and that such councils have legislated on matters concerning the Pueblo and its inhabitants by rules and decisions having the force of law.

It is alleged that these people have always maintained a high degree of civilization as compared with the wild or savage Indian tribes, and have always been peaceable and have never made war on white settlers or resisted established government.

It is further alleged that the inhabitants of said Pueblo were at the time of the Gadsden treaty, citizens of Mexico, with large civil and political rights, and that they are now citizens of the United States and of the State of Arizona. The bill further alleges that "the said laws and customs of the Indians and also the laws of Spain and of Mexico at all times conceded to the plaintiff, and the plaintiff claims and exercises, and from time immemorial has claimed and exercised" all of those rights and privileges that are usually vested in a municipal form of government when established by law, and by reason of these facts the plaintiff claims that it is, and from time immemorial has been, under the laws of Spain and Mexico and of the United States "an entity in fact and in law a juridical person entitled to sue as such"; and it brings this suit in its own right.

23 In view of these allegations of the bill of complaint, a question arises whether the first two grounds of the motion to dismiss are maintainable. The first of these grounds alleges that the bill does not show any capacity in the plaintiff either to begin or maintain this or any other suit in its own right or otherwise, in that the bill fails to show that the plaintiff is a body politic incorporated or existing under the laws of the United States or the State of Arizona, or that it is under any law a body politic and corporate, with power to institute or maintain suits at law or in equity.

It is true that the bill does not allege in so many words a distinct grant of corporate character, power and authority by action of any sovereign power, under which the inhabitants of the alleged Pueblo have lived, unless the allegation of the bill to the effect that "the laws and customs of the Indians, and also the laws of Spain and of Mexico, at all times conceded to the plaintiff" the corporate authority and power claimed in the bill, as quoted above. But this bill does allege, as a matter of fact, and on this motion the allegation must be taken as admitted by the defendants, that from time immemorial the plaintiff has exercised and claimed to exercise the corporate power and powers set out, which include among other things the right and power to sue and be sued as an entity, and to appear and act as such before courts and governmental authorities. Indeed, the bill sets out a form of government somewhat similar in its general characteristics, to the old New England townships; a form of government, simple it is true, essentially democratic in its governmental character, but efficacious as a governmental agency for a simple people

24 living under conditions that present none of the complexities of modern aggregations of people maintaining a varied social order.

The second of the first two grounds of the motion to dismiss alleges that, as appears by the bill of complaint, and from well known facts and laws of which the Court will take judicial notice, there is no such thing as a "Pueblo" in law existing in the State of Arizona, with the right to hold or own property, with the privilege to sue or be sued, or to institute or maintain, in its alleged name or own right, any suit at law or in equity in any court; but, on the contrary, that said "Pueblo" is merely a settlement of Indians under the tutelage and control of the United States, occupying public lands, the legal title to which is in the United States by sufferance of said United States, and that said settlement of Indians is without legal entity or capacity to maintain this or any suit.

Assuming, without deciding however, that the plaintiff has a corporate character which would enable it to maintain in a Court of the United States, suits in the assertion or protection of property rights, let us consider for a moment the character of this particular alleged Pueblo.

Its inhabitants are Papago Indians, who are described in that valuable publication, issued by the Bureau of American Ethnology, in the Smithsonian Institution, called "The Handbook of American Indians," part two, page 200, as

"A Piman tribe, closely allied to the Pima, whose original home was the territory south and southeast of the Gila River, especially south of Tucson, Arizona, in the main and tributary valleys of the Rio Santa Cruz, and extending west and southwest across the desert waste known as Papagueria, into Sonora, Mexico."

25 This authority further states that, like the Pima Indians, the Papagos "subsist by agriculture, maize, beans, and cotton formerly being their chief crops, which they cultivated by means of irrigation."

The Handbook further states:

"An extensive trade in salt from the great inland lagoons, was formerly conducted by the tribe, the product finding ready sale at Tubac and Tucson. Their present principal crops are wheat and barley. They are also stock raisers, and in recent years many of them have gained a livelihood by working as laborers, especially on railroads and irrigation ditches. * * *

"From early times the Papagos have been known as a frugal and peaceable people, although they by no means lack bravery when pressed by their enemy, the Apaches, from whose raids they suffered severely. Their typical dwelling is dome-shaped, consisting of a frame-work of saplings, thatched with grass or leafy shrubs, with adjacent shelters or ramada. These lodges are from 12 to 20 feet in diameter, and sometimes the roof is flattened and covered with earth."

The same authority gives us the Papago subdivisions or settlements, so far as known, including in the list Santa Rosa. This same authority, speaking of Santa Rosa, on page 460, states it to be

"A Papago village south of the Rio Gila and west of Tucson, Arizona."

It is further interesting to note in this connection that, in a report of the Surveyor General, made in 1861, in pursuance of the provisions of the Act of Congress of July 22, 1854, (10 Stat. L. 308), he reports on all the Pueblos in New Mexico, including the territory added to New Mexico by virtue of the Gadsden treaty, and which new territory included the land of the Papagos. The Surveyor General gives a list of forty-eight Pueblos, and includes among them the Pueblo of Santa Rosa, which appears as number forty-six on the list mentioned. Eleven such Papago pueblos are included, with a total population as of the year 1861 of 3,500 persons, and the list is prefaced as follows:

26 "Statement showing respectively the names of all the Indian Pueblos in New Mexico, with their localities, population, wealth, etc., and the times when their land claims were confirmed by Congress and when surveyed, and the areas thereof."

This Papago territory of New Mexico subsequently formed a part of the territory, later the State, of Arizona.

The Government in its memorandum brief submitted on behalf of the motion under consideration, defines a pueblo as a village or town, and the definition of Pueblo given on page 318 of the "Handbook," from which extracts have already been quoted, is the same; and while the term seems generally to have been applied to designate Indians who lived, or are living, in permanent stone or adobe houses, built into compact villages, the "Handbook" states that these villages are found in Southern Colorado, Central Utah, New Mexico, Arizona, "and extended sometimes to include the settlements of such tribes as the Pima and the Papago, who led an agricultural life."

From the foregoing, it would seem that there has long existed in Arizona, the Pueblo of Santa Rosa, being a village or town whose inhabitants are a part of the Papago tribe of Indians, and that pueblos of this character have long existed both in Arizona and in New Mexico, and were in existence prior to the acquisition of this territory by the United States, and, so far as anything appears to the contrary, during the period of Mexican rule, and prior thereto, during the Spanish rule. It may be true that the inhabitants of the Pueblo of Santa Rosa are an agricultural people, and have always been, but it does not follow from this that they have not had their town or village, till the land which stretched out and away from the town or village.

27 A consideration of the third and fourth grounds of the motion to dismiss requires a further analysis of the bill of complaint.

The bill alleges that from time immemorial, and since before the first explorations of the Spanish discoverers, and more than three hundred years prior to the institution of this suit, the plaintiff has owned, actually possessed and occupied a tract of land now situated in

Pima County in the State of Arizona, containing an area of 720 square miles, more or less, and in and on which the village where the inhabitants of the plaintiff Pueblo reside, exists. The land is described by metes and bounds, and it is alleged that during all of the period aforesaid, it has been exclusively, actually occupied and possessed by the plaintiff under open and notorious claim of right and absolute ownership; that said plaintiff and its inhabitants have, during all of said period, occupied and utilized all of said land for the purposes of agriculture and grazing, and have resided thereon; that the boundaries of said land as found in the description by metes and bounds given, have, from time immemorial, been definitely fixed, known and recognized; and the ownership, possession, use and occupation of said land by the plaintiff and its inhabitants have always been coterminous with said boundaries; that Spain, during its period of sovereignty, and later Mexico, during its period of sovereignty over the territory including said land, always recognized and never disputed the ownership of the same by the plaintiff; and it is situated within the boundaries of the territory ceded by Mexico to the United States by the Gadsden purchase and treaty.

28 The bill alleges that at the time of the acquisition from Mexico of the territory in question, the plaintiff was the absolute owner, with complete, perfect and indefeasible title to said land, against all governments, individuals, and of the whole world and since the change of sovereignty from Mexico to the United States, this title and ownership has continued to exist, and now exists; and it is alleged that by the terms of the Gadsden treaty and of the treaty of Guadalupe Hidalgo, the ownership of these lands by the plaintiff was forever guaranteed to it by the United States.

From the foregoing, it will be seen that the bill nowhere alleges a purchase by, or a grant or deed to, the plaintiff, of the land in question. The allegations show rather a title by possession and occupation for a period of several centuries, a possession and occupation which, it is alleged, was always recognized and never disputed during the long period of Spanish sovereignty and later during the period of Mexican sovereignty and control. These are facts that are admitted by the motion to dismiss, though only for the purpose of the motion, and the question then arises whether this shows such a title in the plaintiff as entitles it to the aid of the Court in the manner sought by the bill.

The acts of the defendants complained of are, among others, that they are now offering for entry, as part of the public domain of the United States, all of the land hereinbefore described; that they have heretofore granted pretended patents to third persons, covering portions of said land and are threatening to issue other pretended patents to other parties of other portions of said land; that they have repeatedly trespassed upon said lands, and are threatening to continue such trespasses, and are threatening to enter upon said land

29 and there to make surveys, under the claim that said lands are a portion of the public domain of the United States, and are the property of the United States and not of the plaintiff; and

that they have caused to be published and circulated, and are now publishing and circulating, and threatening to continue to publish and circulate, maps purporting to be official maps of the Department of the Interior, showing said land as a part of the public domain of the United States, and that these acts will throw a cloud upon the title of the plaintiff to said land, and will cause many persons to attempt to settle upon the land and enter the same in the Land Department of the United States, and that the plaintiff will be unable to remove such persons without a great multiplicity of suits; that pursuant to the Act of Congress of June 20, 1910, providing for the admission of Arizona as a state of the Union, the United States granted to said State more than 2,000,000 acres of land, which was to be selected under the direction and subject to the approval of the defendant Secretary of the Interior, from the public lands of the United States within the limits of said State by a commission of State officers; and that for the purpose of such selection, the State might procure the survey of the United States public lands within said State, to be surveyed in the manner prescribed by the Act of Congress, approved August 18, 1894; and to procure such survey, and in order to make the said selection, the State of Arizona has applied to the defendant Commissioner of the General Land Office for the survey of certain lands in Arizona, including all of that belonging to the plaintiff; and that this application has been granted by the defendants, and

30 for this purpose authorized the Surveyor General of Arizona to immediately survey said land, and that said Surveyor General, acting under this authority, is now surveying, or is about to survey, all of the plaintiff's land for the purpose of enabling Arizona to select and appropriate to itself all or a part of said land. And there are other allegations, all of which with more or less particularity show that the United States, acting through the defendants, are treating the lands of the plaintiff as public domain and are disposing of it, or intending to dispose of it, in conformity with either general or special acts of Congress authorizing such disposition.

It is to be noted that the plaintiff has never sought to obtain a recognition of its title by the United States, although the opportunity to do so has been open to it by the provisions of the Act of Congress of July 22, 1854 (10 Stat. 308), and by the later act, creating the court of private land claims. (26 Stat. 854.)

The plaintiff, however, claims that it was not required to do this, because the language of the act establishing the court of private land claims left it optional with those who claimed a perfect title of going into said court for the purpose of having such title confirmed, and this contention is sustained by the language of the United States Supreme Court in the case of *Ainsa vs. New Mexico and Arizona Railroad Company*, 175 U. S. 76; and *Richardson vs. Ainsa*, 218 U. S. 289; and the plaintiff claims that its title to the claim has always been perfect.

But we have here a case of land claimed to be owned in fee simple by a village or town in its own corporate right. There is no ownership alleged in the inhabitants of this village or town, they occupying

31 the land in question in common as inhabitants. The title is claimed by the town, the Pueblo, itself.

When the United States acquired sovereign power over the territory which includes this land, the town or village became subject to that sovereignty and this plaintiff Pueblo at most could only claim that the United States had continued to recognize it as an agency of local government, so long as it saw fit to do so. It cannot seriously be doubted that the United States at any time might have put an end to the political character of the plaintiff Pueblo, and when we consider the fact that the inhabitants of this Pueblo were, and are, Indians belonging to the Papago tribe, and when we remember the sweeping authority and control exercised by the United States over the Indians, and such authority frequently sustained by the highest tribunal in the land, no room to challenge its power any longer exists. *Bernal et al. vs. Lynch et al.*, 36 Cal. 135, affirmed 9 Wallace 315; *City of Monterey vs. Jacks*, 139 Cal. 512, affirmed 203 U. S. 360. Also *Grisar vs. McDowell*, 6 Wallace 363, 372. And this power the Court thinks extends over the lands claimed by the plaintiff Pueblo. The Court has no business to concern itself with the policy of the Government in exercising its power, if it exists. That it does exist with respect to the land claimed by an Indian Pueblo is clearly recognized in the case of *United States vs. Sandoval*, 231 U. S. 28. It is true that in that case the Court did not have before it a suit which directly involved a question of a claim to ownership in fee simple by a pueblo as against the United States. That case was a criminal prosecution for introducing intoxicating liquors into the Indian country, the Pueblo of Santa Clara, in the State of

32 New Mexico. The prosecution had been instituted under an Act of Congress making it a punishable offense to introduce intoxicating liquors into the Indian country, and by virtue of a later act, the New Mexico enabling act, Congress in terms defined land owned and occupied by Pueblo Indians as Indian country within the meaning of the Act prohibiting the introduction of intoxicating liquor therein. In the course of its opinion, disposing of the contention thus made, the Court uses this language, page 48:

"It is also said that such legislation cannot be made to include the lands of the Pueblos, because the Indians have a fee simple title. It is true that the Indians of each pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under executive orders, but it is a communal title, no individual owning any separate tract. In other words, the lands are public lands of the pueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs. *Stephens vs. Cherokee Nation*, 174 U. S. 445, 488; *Cherokee Nation vs. Hitchcock*, supra; *Heckman v. United States*, 224 U. S. 413; *Gritts v. Fisher*, id. 640; *United States v. Wright*, supra. Considering the reasons which underlie the authority of Congress to prohibit

the introduction of liquor into the Indian country at all, it seems plain that this authority is sufficiently comprehensive to enable Congress to apply the prohibition to the lands of the Pueblos."

While it does not appear that the Government has ever, until the events leading up to the institution of this suit, undertaken to exert any authority over the land particularly described in the bill of complaint as belonging to the plaintiff, the Court takes judicial notice of the fact that with respect to other Papago Indian lands, it has quite frequently exerted its claimed authority and power. This has taken the form of creating, by executive orders, Indian reservations. A list of these submitted by counsel for the defendants is as follows:

33 No. 1. San Xavier Reservation. By President Grant, July 1, 1874. See Executive orders relating to Indian Reservations from May 14, 1855, to July 1, 1912, Wash., Gov. Pt. Office, 1912, at p. 23.

No. 2. Gila Bend Reservation. By Pres. Arthur, Dec. 12, 1882. "Executive Orders," etc., p. 14.

NOTE.—On June 17, 1909, Pres. Taft "restored to the public domain" Sec. 16 and sections 19 to 36, of lands within this reservation. Executive Orders, etc., p. 14.

No. 3. Created by Pres. Taft, June 16, 1911, being a part of Sec. 7, Township 21 S., Range 6 E., Gila and Salt River Meridian. Executive Orders, etc., p. 23.

No. 4. Papago reservation, created June 16, 1911, by Pres. Taft, situate in Township 17, Range 5. Executive Orders, etc., p. 23.

NOTE.—The description of Nos. 3 and 4, as given in "Executive Orders," etc., were amended and modified by Executive Order No. 1655, dated December 5, 1912.

No. 5. Cockleburrr, Tat-Mahmeli (or Tat-murl-ma-kot), and Chiu-Chiusechu (or Chur Chaw). Created May 28, 1912, by order of Pres. Taft.

Executive Orders, etc., p. 24.

No. 6. Ah-Chin, etc. (Maricopa), created by order of Pres. Taft, May 28, 1912.

Executive Orders, etc., p. 24.

No. 7. Reservation at Baboquivari, created by Pres. Taft, Dec. 5, 1912.

Executive Order No. 1655.

The power to establish such reservations has long been recognized by the Courts, *Grisar v. McDowell*, 6 Wall. 363; and reservations thus established have been recognized by Congress in its enactments, 24 Stat. 388, sec. 1; and in addition has granted a right of way to the Arizona Southern Railroad Company through one of the Papago Indian reservations thus established in Arizona. 22 Stat. 299; and a right of way to the Citrons Water Company across the Papago Indian reservation in Maricopa County, Arizona. 25 Stat. 629. It has made appropriations in connection with such reserva-

tions, and in addition has appropriated money for the improvement and sinking of wells, etc., for eight Papago villages in
 34 Southern Arizona. This was done by an Act of Congress approved August 1, 1914 (38 Stat. 583, 588, 594), and by this same Act it appropriated \$50,000.00 to furnish school facilities for the children of the Papago tribe of Indians in Arizona, a part of which was stated by counsel for the defendants it is proposed to expend in the Plaintiff Village or Town of Santa Rosa; and by the same act an appropriation was made for nomadic Papago Indians in Pima County, Arizona. The deficiency act of April 6, 1914 (38 Stat. 312, 332) contains an item for the nomadic Papago Indians of Arizona.

It thus is seen that the political departments of the Government have for a considerable period of time claimed and exercised power, authority and control over the lands occupied by the Papago Indians.

In summing up the matter, the case presented by the bill involves a claim of corporate existence on the part of the plaintiff that depends upon user of such corporate power and authority and not by virtue of a grant by any sovereign power whatsoever, unless it be in the rather vague allegations that the laws and customs of the Indians and the laws of Spain and of Mexico at all times "conceded" to the plaintiff the character, power and authority claimed. Nowhere is there pointed out to the Court a grant which has conferred corporate power, but the claim seems rather to be based upon the theory that because some of said laws and customs recognized the existence of pueblos of the kind that the plaintiff is alleged to be, that therefore they have expressly recognized this particular plaintiff as such a pueblo.

35 As has been pointed out, no express grant of the land claimed by the plaintiff is alleged ever to have been made by Spain, Mexico, or the United States. It has never sought to obtain from the United States a recognition of its claim of title.

The inhabitants of the Pueblo probably do not exceed a few hundred in number. The permanent character of the town or village is at least doubtful when tested by what is clearly recognized as an Indian Pueblo, and it is claiming, under such circumstances, a fee simple title in absolute unrestricted ownership of 720 square miles of land, more or less, under a description by metes and bounds, whose beginning point is at least exceedingly vague, commencing, as it is alleged to do in the bill of complaint, "at a point or place known as Batique or Mountain Logia plain."

The Court is of the opinion that the suit thus instituted cannot be maintained. The motion to dismiss is granted, and an order will be signed accordingly.

F. L. SIDDONS,
Justice.

April 11, 1916.

Decree.

Filed April 25, 1916.

* * * * *

This cause came on to be heard on defendants' motion to dismiss the bill of complaint and was argued by counsel; whereupon, on consideration thereof, the court being fully advised in the premises, it is, this 25th day of April, 1916,

36 Ordered, adjudged, and decreed, that the motion to dismiss be, and the same is hereby sustained, and that the bill of complaint herein filed, be, and the same hereby is, dismissed, with costs to the defendants to be taxed by the clerk.

By the court:

F. L. SIDDON, *Justice.*

From the above decree an appeal is entered by the plaintiff in open Court to the Court of Appeals of the District of Columbia and the penalty of the bond is fixed at \$100.00 or \$50 cash deposit in lieu of bond.

F. L. SIDDON, *Justice.*

Assignment of Error.

Filed June 15, 1916.

* * * * *

The Court erred in granting the motion of the defendants and dismissing the bill of complaints.

RALPH S. ROUNDS,
HENRY P. BLAIR,
Attorneys for Plaintiff.

Memorandum.

June 9, 1919.—Mandate of Supreme Court of the United States reversing decree of Court of Appeals filed.

37 *Answer.*

Filed June 9, 1919.

* * * * *

Come now Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, by their attorneys and subject to the ruling of the court upon the motion to dismiss the bill of complaint for want of authority by the attorneys

of record to sign the same or represent the alleged plaintiff and affidavits filed with said motion, answering said amended bill of complaint, say:

1. That the alleged plaintiff, the so-called Pueblo of Santa Rosa, has not now nor ever has had any existence as a Pueblo and that neither the Indian inhabitants of the scattered villages in the Santa Rosa Valley in Pima County, Arizona, nor the said villages or communities therein, nor any one thereof, has any corporate or quasi corporate existence, organization or entity, nor do they constitute a pueblo or a corporate entity acting under a common name or as a unit with alcaldes and council, or other governing body.

2. The inhabitants of the said Santa Rosa Valley are Papago Indians, ignorant, illiterate and wholly unfamiliar with legal forms or procedure, and have no definite organization nor generally recognized chief or council or other governing body but the said Indian villages are, and each of them is, what is known in the Spanish law and language as a "rancheria" and in the Mexican law and language as a "temporale," a small aggregation of persons living in the same neighborhood, without definite organization or systematized communal entity, usually defined as a hamlet of huts or group of Indian huts, while the Indians term these summer rancherías, Ooitak, meaning fields.

3. The said scattered villages or communities in the said Santa Rosa Valley have not now nor ever had as a corporate entity, and none of them now has or ever had, as such corporate entity, title to any land in said Santa Rosa Valley.

4. These scattered villages or communities in Santa Rosa Valley have not, nor has any one or more of them, authorized the institution or maintenance of this suit by the attorneys of record who profess to represent the said alleged plaintiff, the so-called Pueblo of Santa Rosa, nor ratified or approved the acts of the said attorneys in bringing or prosecuting the same.

5. Neither the said scattered Indian villages or communities nor the individual Indians therein had any knowledge whatsoever of the institution or pendency of this suit until long after the same had been brought nor until they were informed thereof by representatives of the Indian Bureau, and the institution and maintenance thereof by the said attorneys were, and are, wholly unauthorized by the said villages or any of them, or by the Indians inhabiting said region.

Further answering said amended bill of complaint, defendants say:

1. That the Papago Indians who inhabit the Santa Rosa Valley, Pima County, Arizona, are of the Pima stock of Indians and are entirely distinct in language and culture from the Pueblo Indians in New Mexico and are a semi-nomadic people a greater part of whom inhabit Arizona and Northern Mexico and have never lived in such pueblos or villages as are occupied by the Pueblos of New Mexico, but live and have always lived in scattered communities or villages or, as termed by the Indians Ooitak, fields.

The Papago Indians who live in the Santa Rosa Valley have never had a common name of "Pueblo of Santa Rosa" or any other com-

mon name to designate the said Indians as a definite organization or communal entity or as a "Pueblo" as that term is used to denote a community with definite organization or with certain political, civic or property rights. The Papago Indians are, in a limited sense, an agricultural and pastoral people, known by their kinsmen, the Pimas, by the Indian name meaning "desert people," while the Pimas inhabit the Gila River section in Arizona, and are known to the Papagos by the Indian name meaning "river people." But neither the Pimas nor the Papagos, who are of Pima stock, are known among themselves or by the white people as Pueblo Indians. The Pueblo Indians of New Mexico have always had a definite organization and a well defined form of government, with alcaldes, generals, captains and councils regularly selected and definitely organized, while the Papago Indians while governing themselves in accordance with certain laws and customs relating to matters mainly of religion or superstition, have always had only a very loose organization and no fixed system of law, and the selection of their chiefs is casual and unsystematic, and their entire communal life loose and indefinite.

The said Indians inhabiting the Santa Rosa Valley have no common name save the tribal name of Papago Indians and the
40 term Santa Rosa Indians is an indefinite one used by the white people to designate all of the Indians who occupy scattered rancherias or villages in the Santa Rosa Valley; the said Indians of the Santa Rosa Valley have not now or ever had the right and power to take and dispose of real property nor the right to act as an entity, nor have they ever maintained a town organization or government, nor do said Indians nor the villages in said Valley of Santa Rosa constitute an entity in fact or in law or a juristic person.

There are numerous scattered villages in the Santa Rosa Valley, and mountains surrounding same, inhabited by the Papago Indians. Among these is the village of Kuarshi or Kuarchi, also called Archi, perhaps the oldest settlement in said valley, and being formerly the largest rancheria in the Papago country. In the village of Kuarchi there are now only about six or eight families occupying groups of huts similar to those described by Lumholtz in "New Trails in Mexico (1912)" page 7, as follows:

The dwellings here, rectangular in shape, are usually adobe huts or light sheds made of sunflower stalks placed upright, three or four sahuaro ribs, which are tied horizontally, binding these together. The walls are usually plastered both inside and out with mud mixed with straw; the uprights are forked poles of mezquite and the same kind of a pole always stands in the middle of the house to support the roof. The rafters, too, are of mezquite, the roof consisting besides of a layer of coarse grass called sacaton and another of wheat straw, on top of which is placed mud. The roof is slightly raised in the middle in order that the rain may more easily run off; the floor is earthen. Huts made of upright ocotillo sticks, but otherwise similar, are also seen. A window is rarely found in the houses.

Generally there is attached to the house a shed called in Spanish *jacal*, a light roof resting on four or six forked upright poles, which furnishes a grateful shade. Here the cooking is done, and here the family is usually found sitting. The dwellings in the rest of the Papagueria are of a similar type, real adobe houses being seldom met with. The dome-shaped grass huts of the natives are also not uncommon in the interior districts of southern Arizona.

41 Another of these scattered villages of the Santa Rosa Valley is the village of Anegam, three miles north of Kuarchi, which is a distinct community of about 44 family groups of huts and 267 inhabitants. Ak-Chin is another village containing 25 family groups of huts and a population of 123. It is located about five miles southwest of Kuarchi. Quewa or Kvivo, meaning "Low Down" or "Below" is another name for Kuarchi. Ki-a-chie-muck, meaning "burned cactus seed" is another village located between Kuarchi and Ak-Chin, being inhabited by 310 Indians divided into sixty family groups of huts, and is now the largest rancheria in the Santa Rosa Valley.

The defendants deny that any one of these villages in the Santa Rosa Valley is known by the common name of Pueblo or Santa Rosa. The term Santa Rosa is of Spanish origin, and is indiscriminately applied to a stretch of country of indefinite limits embracing the above mentioned villages and certain mountain settlements not herein named.

These scattered villages are all composed of huts such as hereinbefore described, and these huts are utterly different in architecture and character from the compact, thick walled and substantial buildings of the Pueblo Indians, from one to seven stories in height and which style of architecture and high grade of culture gave to the latter Indians the name of Pueblo Indians.

In the village of Anegam there is a deep well sunk by the government for the benefit of the Indians. In the village of Kiachiemuck, the government has sunk a deep well and built a day school for the

Papago Indians. All of the Indians of the Santa Rosa Valley
42 are under the control and supervision of the Papago Agency, now located at Sells, formerly Indian Oasis, which is the center of the Papago country, where new buildings have been erected and occupied consisting of cottages, offices, barns and warehouses, and where the government maintains for the aid and assistance of these Indians a physician, farmer and a stockman and other employes. Contracts and plans are now in process of completion for the erection of a hospital for which purpose the sum of \$15,000 has been allotted and \$10,000 has been appropriated by Congress by the Act of May 25, 1918, for the purpose of fencing this Reservation where it touches the Mexican border. There has been annually appropriated by Congress since 1914 \$20,000 for the improvement and sinking of wells for Papago villages in this Reservation. This Indian agency was formerly quartered near the San Xavier Mission.

The defendants, therefore, deny that the alleged plaintiff is and from time immemorial has been the town or Pueblo of Santa Rosa

and except as herein set out, deny all of the other material allegations of Paragraph I of the amended bill of complaint.

II. Defendants admit the allegations in Paragraph II of the said amended bill of complaint.

III. Defendants deny that for more than 300 years prior to the bringing of this action the alleged Pueblo of Santa Rosa has owned, possessed and occupied the tract or parcel of land in Pima County, Arizona, described in said amended bill of complaint, but allege the

43 description of said land in said bill of complaint is taken from a pretended deed purported to be executed by one Luis on behalf of the inhabitants of certain villages in the Santa Rosa Valley, a copy of which is filed herewith as Exhibit "A" and is prayed to be read as a part of this answer. This said pretended deed is one of sixteen such instruments in writing, each being dated in December, 1880, in all of which one Robert F. Hunter, Trustee, is the grantee, but for whom the said pretended grantee is trustee does not appear, while in each of said deeds a certain alleged chief of some Papago village or villages is named as grantor. In the said pretended deed purporting to be a conveyance on behalf of the village of Santa Rosa, the instrument purports to be "made by and between Luis, Captain of the Village or pueblo of Santa Rosa, in the Territory of Arizona, for himself and the inhabitants of said Village and the villages of Aitij, Semilla-Quimade and Chaquiwa, of the first part, and Robert F. Hunter, Trustee, of Washington, District of Columbia, of the second part." The description of the land attempted to be conveyed in the said deed is practically identical with the description of the land set out in the bill of complaint herein. Ten of these pretended deeds, including the alleged deed from said Luis, were filed for record June 2, 1914, and the remaining six in March, 1919, from 33 to 38 years after their purported execution, and said deeds purport to convey to the said Hunter one-half interest in more than 2,600,000 acres of land (4,071 square miles) in Pima and Pinal Counties, Arizona. The said Hunter, Trustee, by agreements with one Robert M. Martin of Los Angeles, California, dated March 17 and May 17, 1911, purported to sell to the said Martin three-fourths of the one-half interest "vested" in said Hunter, Trustee, covered by the said ten pretended deeds filed for record 44 June 2, 1914, the said Martin binding himself to take steps for securing a partition of the said land, *all proceedings to be instituted in the name of the Indian inhabitants of the respective villages named in the deeds.*

The defendants further deny that the said villages in the Santa Rosa Valley or the said Indian inhabitants of the said Santa Rosa Valley ever had, or claim to have had, any title to any tract or parcel of land therein and aver that the said Indians have claimed and exercised over lands in the Santa Rosa Valley merely the ordinary Indian right of occupancy, use and possession. The said boundaries, as alleged in said bill of complaint, are indefinite, uncertain and incapable of being accurately ascertained, and the defendants deny that such boundaries have from time immemorial been definitely fixed and recognized or marked by natural monuments. Defendants

further deny that any village or villages of Papago Indians in this region have asserted ownership to any definite tract or tracts of land therein and that the said tract of land, alleged to be owned, and occupied and set apart in any manner for any one village or villages of Indians, is wholly a myth. The Papago Indians have never claimed nor has there been assigned to them by Spain, Mexico or the United States any title to any lands save the ordinary Indian title of occupancy and right of possession which the Papago Indians have exercised over the Papago Indian country without division among the villages or other divisions of such tribe. Except as herein set out, defendants deny every allegation of Paragraph III of the amended bill of complaint.

45 IV. The defendants deny that Spain during the period of its sovereignty over the territory recognized the ownership of said lands by the alleged Pueblo of Santa Rosa by royal orders, decrees or otherwise and aver that the country wherein the Santa Rosa Valley lies was practically or entirely unknown to Spain, and that Spain in no instance recognized in the Papago tribe, or any subdivision of that tribe, any other title than the ordinary Indian title of possession and use.

And defendants further deny that Mexico after the establishment of its sovereignty, recognized and never disputed the ownership of the lands in the Santa Rosa Valley by the said alleged Pueblo of Santa Rosa or any village or community in the Santa Rosa region. Defendants are not informed as to whether or not the Santa Rosa Indians were recognized citizens of Mexico during its sovereignty, but aver that the same is not material nor is it material as to whether or not Spain and Mexico recognized distinctions between savage Indians and peaceable Indians living within their borders; and except as herein set out, they deny every allegation of Paragraph IV of the bill of complaint.

V. The defendants admit that the Santa Rosa Valley is situate within the boundaries of the territory ceded by Mexico to the United States by what is known as the Gadsden Purchase, and admit that under the terms of the treaty known as the Treaty of Guadalupe Hidalgo, all property rights of the Mexican citizens were agreed to be respected by the United States, subject, however, to the qualifications set forth in Article VI of the Gadsden Treaty and
46 the second paragraph of the protocol to the said Treaty of Guadalupe Hidalgo, as well as to the other terms of said treaties, but the defendants deny that by the terms of said treaties, or otherwise, the Papago Indians or the inhabitants of the alleged Pueblo of Santa Rosa pretended to become or actually became citizens of the United States, but in this connection the defendants aver that the citizenship of the Papago Indians is immaterial herein. Otherwise than as herein set out, the defendants deny every allegation of Paragraph V of said bill.

VI. The defendants deny that at the time of the Gadsden Purchase or at the time of the acquisition from Mexico by the United States of sovereignty over the territory comprising land in the Santa Rosa Valley or at any time the so-called Pueblo of Santa Rosa or any village or community in the Santa Rosa region or any Papago village

whatever was the absolute owner of a complete, definite, indefeasible title to the land herein in controversy or was owner of said land or any land, but aver that all of said lands in controversy herein were then and ever since have been and are now part of the public domain of the United States, subject only to such Indian rights of occupancy and use as have been or are now actually exercised, except in so far as the United States in the exercise of its sovereignty and in the administration of its laws for the protection of the said Papago Indians has created Indian reservations, as hereinafter set forth, or has disposed of portions of said lands to individuals.

Otherwise than as herein set forth, the defendants deny every allegation of Paragraph VI of said bill.

47 VII. While the description of the lands in controversy in said amended bill of complaint is indefinite, uncertain and incapable of being accurately ascertained, the defendants deny that they have offered and are now offering for entry as part of the public domain lands partly included in said description, but in this behalf aver that by Executive Order 2300, dated January 14, 1916, as modified by Executive Order 2524, dated February 1, 1917, a large area of land, to-wit, approximately 2,443,000 acres, was withdrawn from sale or entry and made a Reservation for the Papago Indians including those in the Santa Rosa region, within which said area is included, so far as can be determined from the description given in said amended bill of complaint, practically all of the land therein described. Within said reservation is also embraced about 2,000,000 acres of land covered by the aforesaid sixteen pretended deeds to Hunter, Trustee.

There have been various reservations in this region created by executive order for Papago Indians as follows: San Xavier Reservation created by President Grant July 1, 1874 (70,080 acres); Gila Bond Reservation by President Arthur December 12, 1882 (about one township. This has been modified to 10,231 acres); San Miguel, by President Taft, June 16, 1911; Indian Oasis, by President Taft, June 16, 1911; Cocklebur, by President Taft, May 28, 1912 (34,560 acres); Ah-Chin or Maricopa by President Taft, May 28 1912 (22,400 acres); Baboquivari, by President Taft, December 5, 1912 (this reservation embraced the Indian Oasis and 4,000 acres Fresno Wells); and the aforesaid reservation created by Executive

48 Order of January 14, 1916, of approximately 2,800,000 acres, which, as modified by Executive Order of February 1, 1917, is reduced to 2,443,000 acres but still includes the San Miguel, Indian Oasis, Cocklebur, Ah-Chin and Baboquivari reservations.

The defendants aver that the matter of creating a comprehensive reservation in the Papago country for the Papago Indians had long prior to the Executive Order of January 14, 1916, been under investigation and consideration by the Interior Department and to that end surveys of the Papago country were commenced early in 1911, and continued until December, 1912. Based upon the facts submitted by the engineers in their reports, together with information given by the Special Agents of the Indian Office, that Office recommended the creation of the reservations made by President Taft in

1911 and 1912. This survey work was resumed in February, 1914, and was continued and concluded by Herbert V. Clotts, Assistant Engineer, the result of his work being incorporated in a comprehensive report dated June 30, 1915, on file in the Interior Department. On February 6, 1914, a joint report was submitted to the Interior Department by Frank A. Thackery, Superintendent of the Pima Reservation, and H. J. McQuigg, Superintendent of the Papago Reservation, fully describing the conditions existing in the Papago country and recommending the creation of a large reservation for the Papago Indians in Pima, Pinal and Maricopa Counties, Arizona, filing with their report, dated January, 1914, a map showing the outlines of the proposed reservation. On September 4, 1914, Inspector J. H. Fleming was directed to proceed to Arizona for the purpose of investigating and reporting upon the question of creating

the proposed reservation and his report fully concurred in the
49 recommendation made by the Superintendents of the Pima and Papago Agencies. After further investigation and reports, the Secretary of the Interior on January 13, 1916, recommended to the President the creation of this reservation.

As before set out herein, this reservation contains 2,443,000 acres which it is believed is ample to meet the needs of the Papago Indians who now number about 6,000, and who have now under cultivation about 10,000 acres, with cattle estimated at about 20,000 to 25,000 and horses about 3,000.

The defendants, therefore, deny that the acts of these defendants complained of would throw a cloud upon any title in the alleged plaintiff to the land aforesaid or are contrary to the rights of any village Indians, or any Papago Indians in the Santa Rosa Valley, but aver that by virtue of the duty imposed upon him the defendant Secretary of the Interior and the Commissioner of Indian Affairs have in every way sought to protect and preserve the rights of these Papago Indians from the encroachment of all persons, and especially from the attempt of persons to unlawfully secure vast tracts of the public domain, now within the reservation created for the Papago Indians. Except as herein set out, they further deny each and every allegation of Paragraph VII of the amended bill of complaint.

VIII. Under the Act of June 20, 1910, for the admission of New Mexico and Arizona as States of the Union, certain lands of the public domain were granted to the State of Arizona to be selected under the direction and subject to the approval of the Secretary of the Interior, and the defendants admit that under said law, the State of

50 Arizona made application for the survey of certain lands in said State and embracing lands in said Santa Rosa Valley, but the defendants deny that the alleged plaintiff owned any of said land or any of the lands advertised by the defendants in the State of Arizona as open to settlers, but aver that by the said executive orders hereinbefore set out there have been reserved from selection by the State of Arizona and from entry under the homestead laws of the United States 2,443,000 acres of land which have been set apart as a reservation for the Papago Indians of Arizona embracing most

of the lands set out in said amended bill of complaint, and all the various Papago villages hereinbefore set out.

Except as herein set out, the defendants deny every allegation of Paragraph VIII of said amended complaint.

IX. The files of the Indian Office show that on or about May 29, 1914, there was received a petition from the attorneys in this case addressed to the Secretary of the Interior purporting to be on behalf of certain Papago Indian villages named therein requesting the survey and withdrawal from entry of certain tracts of land alleged to be owned by these villages, but no description of these lands was given in this petition. However, these defendants admit that on or about June 11, 1914, the Secretary of the Interior made answer to said petition substantially as set forth in Paragraph IX of said amended complaint, and in this behalf aver that no grant emanating from the government of Spain or Mexico was ever made to any village or community of Papago Indians in the Santa Rosa region or to any Papago Indians or located or recorded in the Archives of Mexico as provided in Art. VI of the so-called Gadsden Treaty; that all of

51 the lands in controversy herein when acquired from Mexico passed under the dominion of the United States as public lands of the United States; that no right, title or interest exists or ever has existed in any Papago Indian or community of Indians in or to any of the lands in controversy herein other than the ordinary Indian right of occupancy and possession subject to the sovereign rights of the United States. Except as herein stated, the defendants deny every allegation of Paragraph IX of said amended complaint.

X. The defendants are not advised as to the truth or falsity of the allegations of Paragraph X of said amended complaint, and, therefore, neither deny or affirm the same.

XI. The defendants admit the allegations of Paragraph XI of said bill and deny each and every allegation in Paragraph XII thereof.

And now having fully answered, the defendants pray that this suit may be dismissed for the reasons hereinabove shown; and that they may be hence discharged with their reasonable costs.

FRANKLIN K. LANE,

The Secretary of the Interior,

CLAY TALLMAN,

The Commissioner of the General Land Office,

By Their Attorneys, ALEX. C. KING,

The Solicitor General.

LESLIE C. GARNETT,

Attorney.

GEORGE A. H. FRASER,

Special Assistant to the Attorney General.

52 DISTRICT OF COLUMBIA, ss:

We, Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, do solemnly swear that we have read the annexed answer by us subscribed, and that the

statements of fact therein made as upon personal knowledge are true, and those made upon information and belief, we believe to be true.

FRANKLIN K. LANE,
Secretary of the Interior.
 CLAY TALLMAN,
Commissioner of the General Land Office.

Subscribed and sworn to before me this 6th June, 1919.

[SEAL.]

W. BERTRAND ACKER,
Notary Public in and for D. C.

"EXHIBIT A" WITH ANSWER.

Filed June 9, 1919.

This instrument, made by and between Luis, Captain of the Village or pueblo of Santa Rosa, in the Territory of Arizona, for himself and the inhabitants of said Village and the villages of Aitij, Semilla-quimade and Chaquiwa, of the first part, and Robert F. Hunter, Trustee, of Washington, District of Columbia, of the second part.

Witnesseth: That for and in consideration of the sum of one dollar, lawful money of the United States, to said party of the first part by said party of the second part in hand paid, and certain other valuable and sufficient considerations from said party of the second part to said party of the first part, moving, said party of the first part, the
 53 true and lawful owners of certain grants and tracts of land situate in the Territory of Arizona, and described as follows,
 to-wit:

Being the lands grants and privileges owned by said villages of Santa Rosa, and more specifically determined by the location of said village—Commencing at a point known as Kabitque, (Papago language) Mountain Logia Plain—thence running south to Omoka—a distance of twenty four (24) miles—thence from Okoma running west to Mescalero, a distance of twenty four (24) miles—thence from Mescalero running north to Sierra Cabeza, a distance of Thirty (30) Miles, thence East to the point of beginning. Kabitque, a distance of Thirty (30) miles—and containing Seven Hundred and Twenty (720) Square Miles, more or less. And being the lands owned by said Village at the date of the cession of the Territory of Arizona to the United States, do hereby quit-claim and release, grant, bargain, and sell and convey to the said party of the second part, his heirs and assigns, the undivided one-half of all said grants and tracts of land together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, privileges, easements, licenses and prescriptions thereof, and all the estate, right, title and interest, claim and demand whatsoever of said parties of the first part, either in law or equity, in and to said premises. The fields under cultivation at the date hereof, being excepted.

To have and to hold the same unto the said party of the second part, in trust, his heirs and assigns, forever; and to give legal force and effect to an agreement in writing made and entered into by and between said — — and — — at — — on the —
 54 day of — —, A. D. 188—. And the said Luis party of the first part, for himself and said inhabitants do hereby covenant and agree with said party of the second part, his heirs and assigns, that at the time of the execution of this instrument they are well seized of the above described premises, as of absolute and indefeasible title and estate in fee simple, and have good right and ample and lawful authority to convey the same in manner and form aforesaid; and that the same are free and clear from, all and singular any incumbrance or lien whatsoever, by reason of any former or other conveyance, alienation, or disposition, whatsoever; and that on demand of said party of the second part, said parties of the first part will make, all and singular, such other conveyances, deeds and instruments in writing, with respect to the said grants and tracts of land hereby conveyed, as may be required by said party of the second part to separate and distinguish the same from all other lands to whomsoever belonging; and to complete and perfect the title of the said party of the second part to the same.

In witness whereof, the said parties of the first part have hereunto subscribed their names and affixed their seal of office at San Xavier del Bac, Arizona, the Eighth day of December, in the year of our Lord, one thousand eight hundred and Eighty.

LUIS (his x mark). [SEAL.]

Witnesses to mark:

P. R. TULLY.
 S. AINSA.

TERRITORY OF ARIZONA,
County of Pima, ss:

On this Ninth day of December, A. D. One Thousand Eight Hundred and Eighty before me, Santiago Ainsa, a Notary
 55 Public, in and for the County of Pima, personally appeared Luis whose name is subscribed to the annexed instrument, as the party thereto, known to me to be the person described in and who executed the said annexed instrument as the party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.]

SANTIAGO AINSA,
Notary Public.

Filed and recorded at request of C. B. Guittard June 2, A. D. 1914,
at 3:15 P. M.

P. E. HOWELL,
County Recorder,
By M. WILKERSON,
Deputy.

Book 56, Deeds, Real Estate, Page 488.

STATE OF ARIZONA,
County of Pima, ss:

I, R. B. Vinson, County Recorder in and for the County of Pima, State of Arizona, do hereby certify that the above and foregoing is a full, true and correct copy of deed from Luis Captain of the Village of Santa Rosa etc., to Robert F. Hunter, Trustee, dated December 8th, A. D. 1880 as appears of record now in my office in Book 56 D. R. E. Pages 488 et seq.

In witness whereof, I have hereunto set my hand and af-
56 fixed my official seal, at my office in Tucson, this 14 day of
March, A. D. 1918.

[SEAL.]

R. B. VINSON,
County Recorder of Pima County, Arizona.

Motion to Dismiss.

Filed June 9, 1919.

* * * * *

Come now Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, by their attorneys, and immediately upon the entry of the mandate in this case restoring it to the docket of this court, and before further proceeding therein, move the court that this cause be dismissed for lack of authority on the part of the attorneys of record for the alleged plaintiff to represent their alleged client or to maintain this suit, and for grounds of this motion say:

1. Movants show that this court dismissed this cause because the alleged plaintiff did not have legal capacity to sue and since said dismissal the same has been on appeal, first in the Court of Appeals of the District of Columbia and then in the Supreme Court of the United States, and it is just now again reinstated on the docket of this court.

While this case was thus on appeal in the Supreme Court of the United States, the Solicitor General, then in charge of said case on appeal, having for the first time learned that the said alleged Pueblo of Santa Rosa had never authorized the bringing of said suit, informed counsel appearing for said Pueblo of Santa Rosa and
57 asked to be furnished with their authority for bringing this
suit in behalf of said alleged corporation. In reply to such
request, said counsel furnished to said Solicitor General as
their authority a copy of an alleged power of attorney, dated Decem-

ber 8, 1880, and purporting to be executed by "Luis Captain of the Village of Santa Rosa, in the Territory of Arizona, for himself and the inhabitants of said village and the villages of Aitij, Semilla-Quimade and Chaquima Citizens of the United States," of the first part, and Robert F. Hunter, of Washington, District of Columbia, of the second part, and a certain instrument in writing, dated May 31, 1911, executed by the said Hunter appointing Alton M. Cates, one of the attorneys of record for the alleged plaintiff, to the power alleged to be vested in said Hunter by the said Luis' power of attorney. Copies of the said alleged power of attorney from Luis and its substitution, together with a letter transmitting the same to the Solicitor General, are herewith filed as Exhibit "A" and prayed to be read as a part of this motion. This case was then on appeal in the Supreme Court of the United States to reverse the decree of the Court of Appeals of the District of Columbia at the instance of the United States.

Movants further show that no Pueblo of Santa Rosa herein alleged to be a corporation and suing as such has ever authorized said Hunter or said Cates to institute this suit or to represent it therein, or to prosecute the same for the alleged Pueblo of Santa Rosa. And further show that the said alleged authority of said power of attorney to said Hunter does not purport to be executed on behalf of the Pueblo of Santa Rosa, a corporation, nor on behalf of the inhabitants of the Pueblo or corporation, but on behalf of the said Luis as an inhabitant of the Village of Santa Rosa and on behalf of the inhabitants of Santa Rosa and the inhabitants of the villages of Aitij, Semilla-Quimade and Chaquima. Movants further say that the said alleged powers of attorney convey no authority to said attorneys to represent the said purported plaintiff in this suit or to file or to conduct the same.

Wherefore, the movants say that the said suit should be stricken from the docket of this court and wholly dismissed, and for further grounds say:

2. The scattered villages or communities in Santa Rosa Valley have not, nor has any one or more of them, authorized the institution or maintenance of this suit by the attorneys of record who profess to represent the said alleged plaintiff, the so-called Pueblo of Santa Rosa, nor ratified or approved the acts of the said attorneys in bringing or prosecuting the same.

3. Neither the said scattered Indian Villages or communities nor the individual Indians therein had any knowledge whatsoever of the institution or pendency of this suit until long after the same had been brought nor until they were informed thereof by representatives of the Indian Bureau, and the institution and maintenance thereof by the said attorneys were, and are, wholly unauthorized by the said villages or any of them, or by the Indians inhabiting said region.

4. The said Luis and the said Robert F. Hunter have departed this life, and the said alleged power of attorney and the attempted substitution thereof were and are null and void for the following reasons:

(a) The said alleged power of attorney and its substitution is and are void for indefiniteness and for other defects apparent upon the face thereof, but if ever valid for any purpose are now null and void and of no effect by reason of the death of both grantor and grantee in each.

(b) The said alleged power of Attorney does not mention or identify the land attempted to be described in the complaint as the subject matter of the suit and confers no authority to deal with said land or litigate concerning it.

(c) Neither the said Luis, nor the other Indian inhabitants of the several Papago villages set out in said alleged power of attorney had any power or authority to enter into any contract with respect to the title to any land in said Santa Rosa region.

(d) The said Luis had no authority or power to bind by any alleged power of attorney or otherwise, the inhabitants of said villages or to bind any Papago Indians whatsoever.

(e) The said Luis was neither capable of understanding, nor did he understand, the nature, contents or effect of the said alleged power of attorney, and was wholly unfamiliar with the English language in which the same is written, and the same was not interpreted to him.

(f) Said power of attorney is void because in contravention of the statutes of the United States, especially the Act of March 3, 1871, (16 Stat. L. 570) and other statutes of the United States.

5. The defendants therefore aver that neither the said alleged Pueblo of Santa Rosa, nor the Indian inhabitants of said Santa Rosa region nor any one authorized to represent them or any of them, ever authorized the institution, prosecution or maintenance of this suit or ratified or affirmed the same.

Wherefore, the defendants by their attorneys move that this cause be dismissed as having been brought without authority, and in support of said motion, file herewith the affidavits of W. L. Bowie, T. F. McCormick, John Wilson, Frank A. Thackery, Pablo Commobali, Jose Bail, Jose Juan, Juan Dios, Sacramento Papmose, Abram Pablo, Jose Alberto Ramon, Jose Xavier, Juan Pablo, Marcelino Lopez, Pancho Lopez, Jose Juan, Kumato Lopez, Jose Juan, John Lewis, Jose San Pablo, Alberto Antonio, Val Lopez, Jonah Maria, Gabriel Lopez, Ramoan Verma, Ramoan Cruz, Jose Mariano, Antonio Lopez, Konorone, Roy Williams, Santiago Venito, and Jose X. Pablo; and pray that the same may be taken and regarded as a part of this motion.

FRANKLIN K. LANE,

The Secretary of the Interior;

CLAY TALLMAN,

The Commissioner of the General Land Office,

By Their Attorneys, ALEX. C. KING,

The Solicitor General.

LESLIE C. GARNETT,

Attorney.

GEORGE A. H. FRASER,

Special Assistant to the Attorney General.

Filed June 9, 1919.

Rounds, Hatch, Dillingham & Debevoise, Attorneys-at-Law.

Ralph S. Rounds, Eugene H. Hatch, Frank A. Dillingham, Thomas M. Debevoise, Robert G. Mead, Francis E. Neagle, Stephen Barker, Charles S. Bulkley, Eugene Congleton, George M. Wolfson.

Porto Rico Office: San Juan, P. R.

62 Cedar Street, New York, January 9, 1919.

To John F. Truesdell, Jan. 14/19.

Hon. Alexander C. King,
Solicitor General of the United States,
Washington, D. C.

DEAR SIR:

Answering your letter of the third inst. regarding the case of Franklin Knight Lane, Secretary of the Interior, and Clay Thalman, Commissioner of the General Land Office against the Pueblo of Santa Rosa now pending in the Supreme Court in which you ask us to inform you by what authority the suit was instituted and maintained, we have to advise you that our authority was conferred by the power of attorney and substitution under such power of attorney, copies of which we are enclosing herewith.

We beg to state further that we are advised that the inhabitants of Santa Rosa are cognizant of the fact that the suit is pending and are in sympathy with the result sought to be obtained.

Yours truly,

ROUNDS, HATCH, DILLINGHAM &
DEBEVOISE.

III.

Encs.

175613-33. Department of Justice, Jan. 13, Mails and Files Division. Jan. 14, 1919, Solicitor General Lands Div. Recorded.

Know all men by these presents, That we, Luis Captain of the Village of Santa Rosa, in the Territory of Arizona, for himself and the inhabitants of said village and the villages of Aitij, Semilla-Quimade and Chaquima Citizens of the United States, and duly authorized and empowered to make, enter upon and execute Contracts, issue, make and acknowledge powers of attorney, and do other legal acts to bind and obligate the inhabitants of the said village of Santa Rosa in the Territory of Arizona, do by these presents make, constitute and appoint Robert F. Hunter of Washington, District of Columbia, our true and lawful Attorney, to represent and prosecute in our names, or the names of the said inhabitants of said village before the Gov-

ernment of the United States any of the branches thereof, whether Executive, Legislative, or Judicial, and any of its departments, or wherever necessary, any and all matters of difference, contest or dispute that may attend or arise in the course of settlement, adjustment, determination, compromise or recognition of our title, claims

63 and demands, whether at Law or Equity, and of whatsoever nature, to and for certain grants or tracts of land situate in the said territory the title to which is vested in us or said inhabitants; and which said grants or tracts of land may in whole or in part have been held, claimed, granted, conveyed, or otherwise disposed of by the United States, as a part of the public domain, or have been so treated or regarded by any other persons or parties whomsoever. Giving and granting to our said Attorney full power and authority to take such action in the premises aforesaid as he may deem necessary, in order to recover from the United States, or its grantees, or any other persons or parties whomsoever, possession of any and all of said lands, that may have been conveyed by the United States, by patent or otherwise, or that may be held, claimed or possessed by the United States, or by other persons or parties, in any manner whatsoever.

And full power and authority is further hereby given and granted our said Attorney to settle, adjust or compromise all claims and demands whatsoever which we may have, whether at law or equity, and that may arise with respect to or concerning said lands, and to receive in settlement, in lieu of the lands thus conveyed, or held, or possessed, a money equivalent therefor, the amount to be satisfactory to our said Attorney, and to be by him determined.

Giving and granting to our said Attorney full power and authority to do any and all legal acts in and about the premises herein cited and referred to, that may, in the opinion of our said Attorney, be necessary in furtherance of the purposes herein set forth; whether

64 by suits at law or in equity, by settlement, adjustment or compromise, and to the full extent of every power and authority, such as could be exercised by us if personally present.

Hereby granting to our said Attorney, full powers of delegation, substitution and revocation. And as this Power of Attorney is accompanied with an interest vesting in our said Attorney, for a valuable consideration, it is hereby made irrevocable.

And all Powers of Attorney or authorization, heretofore given or granted in or about these premises, are hereby revoked and cancelled.

In testimony whereof I have hereunto set my hand and affixed the official seal this eighth day of December A. D. 1880 at San Xavier del Bac, Arizona.

Witnesses to mark

P. R. TULLY,
S. AINSA.

LUIS (his x mark) [SEAL.]

TERRITORY OF ARIZONA,
County of Pima, ss:

On this ninth day of December A. D. one thousand eight hundred and eighty before me, Santiago Ainsa, a Notary Public in and for the County of Pima, personally appeared Luis whose name is subscribed to the annexed instrument as the party thereto, known to me to be the person described in and who executed the said annexed instrument as the party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

It witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.]

SANTIAGO AINSA,

Notary Public.

Endorsed: Power of attorney from Luis to Robert F. Hunter.

65 Know all men by these presents: That I, Robert F. Hunter, of the City of Washington, District of Columbia, by virtue of the power and authority to me given in and by the letter or power of attorney of Jose Maria Ochoa, head chief or captain of 17 villages of Papago Indian citizens of the United States, and Joaquin, Captain of the village of Bajio, in the Territory of Arizona, bearing date the 9th day of December A. D. 1880, and by the letter or power of attorney of Luis, Captain of the village of Santa Rosa, in the Territory of Arizona, bearing date the 8th day of December, A. D. head captain of the Papagoes of Arizona and Clementi, captain of the villages of Anaca and Poso Solado in the Territory of Arizona, bearing date the 17th day of December, A. D. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief of 17 villages of Papago Indian citizens of the United States, and Julian, captain of the village of Caca in the Territory of Arizona, bearing date the 7th day of December, A. D. 1880, and by the letter or power of attorney of Asension Rios, captain of the village or pueblo of San Xavier del Bac, bearing date the 8th day of December A. D. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief or captain of the Papagoes of Arizona, and Antoine, captain of the village of Quajate, Arizona Territory, bearing date the 17th day of December, A. D. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief and captain of 17 villages of Papago Indian citizens of the United States, and Miguel, captain of the village or pueblo of Tecolote in the Territory of Arizona, bearing date the 7th day of December, 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief or captain of the Papagoes of Arizona, and acting as captain of the village

66 of Coyote, Arizona Territory, bearing date the 17th day of December, 1880, and by the letter or power of attorney of Jose Maria Ochoa, head captain of 17 villages of Papago Indian citizens of the United States, and captain of the village or pueblo of Quitaca, in the Territory of Arizona, bearing date the 7th day of

December, 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief and captain of 17 villages of Papago Indian citizens of the United States, and Pablo, captain of the village of Tesota in the Territory of Arizona, bearing date the 7th day of December A. D. 1880, a true copy of which powers of attorney and each thereof are hereunto annexed, do substitute and appoint Alton M. Cates of the County of Ventura, State of California, to do, perform and execute every act and thing which I might or could do as the attorney in fact and substitute of the said persons hereinabove named and described, hereby ratifying and confirming all that the said attorney and substitute herein made and appointed, shall do in the premises by virtue hereof, and of the said letters or powers of attorney and each thereof.

In witness whereof I have hereunto set my hand and seal this 31st day of May, A. D. 1911.

ROBERT F. HUNTER. [SEAL.]

Witnesses:

C. B. GUITTARD.
JENNIE SHUTT.

67 STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 31st day of May, in the year of our Lord one thousand nine hundred and eleven, before me, Jennie Shutt, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Robert F. Hunter, known to me to be the person whose name is subscribed to the within and annexed instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[SEAL.]

JENNIE SHUTT,
*Notary Public in and for the County
of Los Angeles, State of California.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I. H. J. Lelande, Clerk of the County of Los Angeles (and ex-officio Clerk of the Superior Court of the State of California, in and for said County, the same being a court of record of the aforesaid County, having by law a seal) do hereby certify that Jennie Shutt whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting,

and verily believe that the signature to the attached certificate is his genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In witness whereof, I have hereunto set my hand and affixed my official seal this 1st day of June, 1911.

[SEAL.]

H. J. LELANDE,
*County Clerk and ex-officio Clerk of the
Superior Court of Los Angeles County,
State of California.*

By E. C. POLSUE,
Deputy.

68

AFFIDAVITS.

Filed June 9, 1919.

Affidavit of W. L. Bowie.

* * * * *

STATE OF ARIZONA,
County of Pima, ss:

W. L. Bowie, of lawful age, being first duly sworn, on his oath deposes and says: That he is and has been since the 23rd day of February, 1918, a Special Supervisor of the Indian Bureau of the United States; that he has been connected with the Indian Service and worked among the Indians in various capacities since the year 1914; that in the month of April, 1918, he was detailed by the Commissioner of Indian Affairs to make an investigation, under the guidance of the officers of the Department of Justice who had charge of defending the above named suit, into all facts that would be of assistance in enabling the officers of the Government to decide as to the positions to be taken by the Secretary of the Interior and the Commissioner of the General Land Office in connection with said suit, and also to enable the Government to decide how best to protect, and, in fact, to protect, the rights of the United States and of the Papago Indians of said "Village of Santa Rosa" and of many other Papago villages against the claims of certain white men to have a half interest in more than 2,000,000 acres of land in the region occupied by the Papago Indians, which region is for the most part now embraced in the Papago Indian Reservations created by the executive orders of July 1, 1874, and January 14, 1916, respectively, and which lands include those described or sought to be described in the above mentioned suit (if the description of land in said suit can be taken
69 as actually identifying any land at all) and which interest in said lands is claimed, as affiant is informed and verily believes, on account of certain alleged deeds from certain Papago Indians to one Robert F. Hunter of Washington, D. C., made in the year 1880 and recorded in the records of Pima County, Arizona, in the year 1914.

That in the course of said investigation, which is still in progress, affiant, with other officers of the Indian Service, on several occasions

after March, 1918, visited the said region occupied by the Papago Indians, including many of the Papago villages among which were certain villages located in what is commonly known among white residents of Southern Arizona as the Santa Rosa Valley; that therein he found three separate settlements of Papago Indians, around which are located the cultivated fields of the Indian inhabitants thereof, all of these villages being included in the tract of land sought to be described in the above mentioned suit; that by inquiry through one Jose X. Pablo, a full-blood Papago Indian who accompanied affiant and who is an employee of the Indian Service stationed upon said reservation, an intelligent and well educated Papago Indian, affiant was advised that these villages were known among the members of the Papago tribe of Indians by the Indian names of Kiacheemuck, Ak Chin, and Archi or Ku Archi (these names are spelled by the sound thereof as pronounced by the Papago Indians, such tribe being without a written language and a more correct spelling affiant is unable to give); that affiant found at the village of Kiacheemuck a building which was erected about the year 1917 by the United States Indian Service which was being

used for a day school and residence of the teacher thereof,
70 there being a Government pump station and well located in this village also; that he was advised that this village is known to the white employees of the Indian Service as Santa Rosa, but was informed by various Indian inhabitants of these three villages in a meeting of representatives thereof, which was called by said affiant and which assembled at the said village of Kiacheemuck, that the name Kiacheemuck, which being interpreted means in English "where the cactus seed was burned," is the only name by which said village has ever been known among the Papago Indians; that the three villages named above have been designated by the Mexican and White residents of the country as the Santa Rosa Villages, and that in order to be understood by such persons the Papago Indians had frequently used the name Santa Rosa to designate any one of the three villages named; that the name Ak Chin interpreted into English means "where the water spreads out," and the name Archi "point of peak," the word "Ku" meaning "big" sometimes being affixed to Archi, meaning "point of big peak;" that the Indian residents of these villages merely reside therein during the two rainy seasons of the year, while they are tilling and harvesting crops planted in fields adjoining said villages, residing the remainder of the time at certain Indian settlements located in the mountains of that vicinity where there is water to be found throughout the year; that in view of the information obtained from these Indians affiant was uncertain of the location of the "Pueblo of Santa Rosa" as designated in the above named suit, and being advised in the meeting of the representatives of the villages named that they were without information or knowledge of the institution of this suit that affiant

later, upon the advice of Government counsel, endeavored to
71 obtain the affidavits of the inhabitants of the villages commonly known among white persons as the Santa Rosa Villages; that affiant again visited the Santa Rosa Valley for that purpose during the week beginning January 12, 1919, being accom-

panied by Jose X. Pablo, before named, as interpreter, and T. E. McCormick, Superintendent of the Papago Indian Reservation; that affiant found, upon visiting said settlements that practically all of the male inhabitants thereof, as he was advised, had gone to various places in the Gila and Salt River Valleys for the purpose of picking cotton, as their own crops had been small, and affiant was only able to obtain the affidavits of ten male residents of these villages; that these persons, however, are among the principal men of these villages, and affiant believes would most certainly know had any of the inhabitants thereof authorized the bringing of this action; that since affiant first visited these villages during the year 1918 he is informed and verily believes that the Indians of these villages fully discussed among themselves the information imparted to them by affiant, that this action had been instituted in the name of the "Pueblo of Santa Rosa;" that all of the Indians whom he found at home signed affidavits or else advised affiant that they were positive that this suit was brought without the authority or knowledge of any of the inhabitants of the Santa Rosa Villages; that some of these Indians declined to sign affidavits stating that it was not their custom to sign papers of any nature, this being the more primitive Indians.

Affiant further says that he took the affidavits of the Indians of said Santa Rosa villages that are filed herewith and which
72 have affiant's name signed thereto as an attesting witness; that affiant believes that each and all of said affidavits are true, and that none of the Indians of said villages now living or who lived when or for a considerable period before said suit was brought knew anything of said suit until long after it has been instituted.

Affiant further says that he verily believes that the bringing of said suit was conceived by white men, and that said suit was brought by white men, and that the sole motive of the men who brought said suit was and is to further interests other than those of the Indians of said villages or of any Papago or other Indians, and affiant further says that he verily believes that those who brought said suit had no authority to bring the same, and that whatever pretended authority that they might have had is more than 30 years old and is connected with the pretended deeds above referred to that were obtained by the aforementioned Hunter in the year 1880 and not placed of record until 1914 and one of which purports to convey an interest in lands the pretended description of which is almost identical with that contained in the bill of complaint in this suit, a certified copy of which deed is attached hereto and made a part hereof.

W. L. BOWIE.

Subscribed and sworn to before me this 20th day of January, 1919.
Witness my hand and notarial seal the day and year first above written. My commission expires July 10, 1920.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

73

Supplemental Affidavit of W. L. Bowie.

* * * * *

DISTRICT OF COLUMBIA, ss:

W. L. Bowie, of lawful age, being first duly sworn, on his oath deposes and says:

That he is the same W. L. Bowie who made the affidavit of January 20, 1919, found among the affidavits in support of the motion to dismiss herein; that subsequent to the time of making his said affidavit, and from January 24 to January 28, 1919, he visited the Salt River Valley and the Gila River Valley, Arizona, and there interviewed a large number of Papago Indians mentioned in his said affidavit as having gone from the Santa Rosa Valley to various places in the Gila River and Salt River valleys for the purpose of picking cotton; that at the last mentioned time he procured the affidavit of Antonio Lopez, being one of the affidavits filed herewith in support of said motion to dismiss, said Lopez, as shown by his affidavit, representing some fifty of said Papago Indians of the village of Kiacheemuck, then temporarily residing at Florence, Arizona; that said affidavit was made after and in pursuance of a council of said Papago Indians then at Florence at which between thirty and forty of said Indians were present, and that in addition thereto said Lopez interviewed the remainder of the band of Papago Indians of Kiacheemuck village, then temporarily at Florence;

And affiant further says that during said period from January 24 to January 28, 1919, he also obtained the affidavits of Konorone, Santiago Venito, Roy Williams, Jose Mariana, Ramoan Cruz, Ramoan Verma, Gabriel Lopez, Jonah Maria, Val Lopez, Alberto Antonio, Jose San Pablo, John Lewis, Jose Juan (second of said name), Kunuto Lopez, Jose Juan (third of said name), Pancho Lopez, and Juan Pablo, all of which said affidavits are also filed herewith in support of said motion to dismiss.

W. L. BOWIE.

Subscribed and sworn to before me this 7th June, 1919.

[SEAL.]

MAUDE H. YATES,

Notary Public in and for the District of Columbia.

My commission expires January 28, 1923.

Affidavit of Antonio Morino.

* * * * *

STATE OF ARIZONA,

County of Pima, ss:

Antonio Morino, being first duly sworn, on his oath deposes and says:

That he is 50 years of age and is a full-blood Papago Indian residing upon the Papago Indian Reservation in Pima County, Arizona; that he has resided all of his lifetime in the Papago country.

Affiant further states that on April 20, 1918, he attended a meeting of representative men of the Papago tribe of Indians held at *Indian Oasis* at the call of the Superintendent of the reservation, T. F. McCormick; that such meeting was attended by about 90 of the principal men of the various Papago villages, including men from the Santa Rosa villages; that it was explained to the Indians assembled at this meeting, by the officials of the Indian Bureau present,

75 that the purpose of calling such meeting was to lay before the tribe the matter of the filing of the suit above named, and to ascertain if such suit had been brought with the authority of the Santa Rosa villages; that affiant knows that the Indians assembled at this meeting maintained that such suit had been brought without the knowledge or consent of the Santa Rosa villages, and without authority from any such village or any individual thereof; that a committee consisting of six Papago Indians was selected by the representatives of the Papago Indians present at said meeting to make inquiry and ascertain whether such suit had been authorized, affiant being one of the Indians chosen on this committee; that thereafter such committee made diligent inquiry among the Papago Indians to ascertain whether the above mentioned suit was brought with the authority of any Santa Rosa village of Papago Indians, and upon the report of each member to the committee that their information was to the effect that such suit was brought without authority of any of these Indians such committee made a verbal report to this effect to the representatives of the Indian Bureau assembled at *Indian Oasis* on May 4, 1918; that affiant further knows that each member of this committee reported to it that certain claims of white men to a one-half interest in a tract of land alleged to be owned by the Santa Rosa Indians was entirely unheard of and unknown to the Indians of such villages; that since the meeting at *Indian Oasis* on May 4, 1918, referred to above affiant has continued to inquire among the Papago Indians and has failed to find any person who has any information touching the bringing of this suit or any knowledge concerning the claim of the white men referred to.

ANTONIO MORENO.

Witness:-

WM. L. BOWIE.
T. F. McCORMICK.

76 Subscribed and sworn to before me this 20th day of January, 1919. Witness my hand and notarial seal the day and year first above written. My commission expires July 10, 1920.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

I, Octaviano Nunez, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

OCTAVIANO NUNEZ,
Interpreter.

Affidavit of Jose X. Pablo.

Filed June 9, 1919.

* * * * *

STATE OF ARIZONA,
County of Pima, ss:

Jose X. Pablo, being first duly sworn on his oath deposes and says: That he is 37 years old, is a Papago Indian and resides at Indian Oasis in the County of Pima, in the State of Arizona; that he fully understands and from a child has talked the Papago language; that he fully understands and can talk, read and write the American or English language; that he has often acted as interpreter between Americans and Papago Indians; that the affidavits hereto attached marked Exhibits "A" to "K," inclusive, were made in his presence by those certain Papago Indians of the villages of Santa Rosa in Pima County, Arizona, whose names are signed thereto, namely: Pablo Commobabi, Jose Bail, Jose Juan, 77 Juan Dios, Sacramento Papamose, Abram Pablo, Jose Alberto Ramoan, Jose Xavier, Marcellino Lopez; that each affidavit before the same was signed was translated by affiant into the Papago language to the person who signed the same and was fully explained before any signing, and in each instance the person who signed the same fully understood the meaning thereof and affixed his signature

all
thereto of his own free will; that [^] of the above named Indians [the following]* including Juan Pablo, whose affidavit was read by himself as he is educated in the English language, are among the principal men of the Papago village of Santa Rosa and they have been and are well acquainted with the affairs of this village and of the Indians residing therein; and that affiant verily believes that if the above named law suit had been in any way authorized by the Papago Indians of Santa Rosa village, the last-named Indians would have promptly heard about it.

JOSÉ X. PABLO,
Deponent.

Subscribed and sworn to before me this 18th day of January, 1919. The word "all" interlined & the words "the following" erased before signing.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

[*Word enclosed in brackets erased in copy.]

* * * * *

STATE OF ARIZONA,

County of Pima, ss:

T. F. McCormick, of lawful age, being first duly sworn, on his oath deposes and says that he is Superintendent of the Papago Indian Reservation located in Southern Arizona, including the Papago Indians of the Santa Rosa Valley in Pima County, Arizona, and has been such Superintendent since the year 1917; that he has been in the Indian Service of the United States for about 14 years; that his official duties require him to be and he is personally acquainted with the leading men of the various Papago villages, including the villages of Santa Rosa Valley, and that he has endeavored to keep informed as to all matters of importance affecting said Indians; that in order to determine, among other things, whether the Papago Indians and especially the Indians of the Santa Rosa Valley villages knew anything about or had ever authorized the bringing of the above entitled suit, this affiant called a meeting of the principal Papago Indians to be held at Indian Oasis; that that meeting was held on the 20th day of April, 1918, at said meeting place, and was attended by about 90 of the principal old and young men of the various Papago villages, including men from the Santa Rosa Valley villages; that after personally addressing the Indians and explaining fully to them through Jose Pablo and Hugh Norris, intelligent Papago Indian interpreters, the existence and purport of this suit, they were asked if any of them present had authorized the bringing of the suit or had ever heard directly or indirectly of its being brought; that different Indians acting as spokesmen for those present answered in open meeting that no one present had ever heard of this or any other suit having been brought; that at this meeting the Indians appointed a committee from among the younger and more intelligent men from the various Papago villages to co-operate with the Government officials and to make further inquiry among the different villages as to whether any of their tribe, not present at this meeting, had ever heard that such suit had been authorized; that this committee reported on May 4, 1918, that they could find out nothing about the Indians signing any papers authorizing in any way the bringing of this or any other suit, nor had any of the Indians ever heard of the bringing of this suit; that if the suit had ever been authorized by the Indians of the Santa Rosa villages they surely would have heard of it; that on July 14, 1918, a similar meeting was held at one of the Santa Rosa Valley villages, at which were present representatives from each of these villages, with the same result; that affiant has diligently tried in many ways to find out from the Papago Indians whether this suit was ever authorized by or on behalf of any of the villages of Santa Rosa Valley or by or on behalf of the Papago Indians residing therein, but affiant has wholly failed to find that any authority for this suit was

ever given by any of the said villages or by any Papago Indian or Indians now living, or living at, or many years before, the time said suit was brought, or at all, and has failed to find that any of the Indians of the villages of Santa Rosa Valley or other Papago Indians have ever heard or known anything about it until informed thereof

80 by affiant and others of the Indian Service in the Spring and Summer of 1918; and that affiant was present when each of the Indian affidavits filed herewith was signed; that he is personally acquainted with the Indians who made these affidavits and knows that they are all reliable persons, and he verily believes that these affidavits are true.

T. F. McCORMICK.

Subscribed and sworn to before me this 20th day of January, 1919. Witness my hand and notarial seal the day and year first above written. My commission expires July 10, 1920.

[SEAL.]

ISABEL M. LAUDER,

Notary Public.

Affidavit of John Wilson.

* * * * *

STATE OF ARIZONA,

County of Pima, ss:

John Wilson, being first duly sworn, on his oath deposes and says:

That he is 46 years of age and is a full-blood Papago Indian residing upon the Papago Indian Reservation in Pima County, Arizona; that he is at present serving as Indian Judge on the above mentioned reservation, having been elected to such position by vote of the Papago Indians of said reservation; that he has resided all of his lifetime in the Papago country and speaks and understands both the English and Papago languages, having been educated in the English language at Carlisle and other Indian schools, and having spoken the Papago language since childhood.

81 Affiant further states that on April 20, 1918, he attended a meeting of representative men of the Papago tribe of Indians held at Indian Oasis at the call of the Superintendent of the reservation, T. F. McCormick; that such meeting was attended by about 90 of the principal men of the various Papago villages, including men from the Santa Rosa villages; that it was explained to the Indians assembled at this meeting, by the officials of the Indian Bureau present, that the purpose of calling such meeting was to lay before the tribe the matter of the filing of the suit above named, and to ascertain if such suit had been brought with the authority of the Santa Rosa villages; that affiant knows that the Indians assembled at this meeting maintained that such suit had been brought without the knowledge or consent of the Santa Rosa villages, and without authority from any such village or any individual thereof; that a committee consisting of six Papago Indians was selected by the representatives of the Papago Indians present at said meeting to make inquiry and ascertain whether such

suit had been authorized, affiant being one of the Indians chosen on this committee, he acting as Secretary thereof; that thereafter such committee made diligent inquiry among the Papago Indians to ascertain whether the above mentioned suit was brought with the authority of any Santa Rosa village of Papago Indians, and upon the report of each member to the committee that their information was to the effect that such suit was brought without authority of any of these Indians such committee made a verbal report to this effect to the representatives of the Indian Bureau assembled at Indian Oasis on May 4, 1918; that affiant further knows that each member of this committee reported to it that certain claims of white men to a one-half interest in a tract of land alleged to be
 82 owned by the Santa Rosa Indians was entirely unheard of and unknown to the Indians of such villages; that since the meeting at Indian Oasis on May 4, 1918, referred to above, affiant has continued to inquire among the Papago Indians and has failed to find any person who has any information touching the bringing of this suit or any knowledge concerning the claim of the white men referred to.

JOHN WILSON.

Subscribed and sworn to before me this 3rd day of February, 1919. Witness my hand and notarial seal the day and year first above written. My commission expires July 10, 1920.

[SEAL.]

ISABEL M. LAUDER,

Notary Public.

Affidavit of Frank A. Thackery.

* * * * *

STATE OF MONTANA,

County of Big Horn, ss:

Frank A. Thackery, being first duly sworn, on his oath deposes and says:

That he now is Chief Supervisor of Farming in the United States Indian Service; that from about the month of November, 1915 to March, 1917, he was a member of the so-called Competency Commission of the Indian Service and as such has with his colleagues on that commission been charged with the duty of investigating and then making recommendations to the Secretary of the Interior as to what Indians among the various tribes are able to manage
 83 their own affairs and so ought to be removed from guardianship by being given patents in fee to their allotments; that he has been in the Indian Service in various capacities for more than 25 years during all of which time he has been in close contact with the Indians themselves; that for the last 7 years he has had much to do with the Papago Indians of Arizona and knows them and their villages and the region they occupy intimately; that, among other things, he, under the direction of the Commissioner

of Indian Affairs, had a great deal to do with the establishment of the Papago Indian reservation of 2,649,000 acres created by the executive order of January 14, 1916, and subsequently reduced to 2,129,000 acres by the executive order of February 1, 1917, and that he had to do especially with all local preliminary work in that matter, including keeping the Papago Indians fully informed and ascertaining their wishes as to boundaries and all other broad features of the projected reservation; and that during the year 1918 he was called upon to and endeavored to explain to the Papago Indians this suit and the effect it might have upon them and to obtain their active cooperation with the officials of the government in relation thereto and also in relation to the efforts of the government in general to protect the lands occupied by the Papago Indians from the claims of white men to have an interest therein.

Affiant further says that since he has known the Papago Indians intimately, to-wit: since January 1912 aforesaid, he has been informed and has observed and verily believes that neither the Papago tribe as a whole nor the Indians of the individual villages, including

84 those of the village of Santa Rosa, have had any definite organization; that the tribe as such has had no elected or even generally recognized chief or head man nor any elected or generally recognized, nor any, council or other governing body; that it is not the custom of the Indians of the villages, including that of Santa Rosa, to elect a chief or head man, but that usually each village has some one man who by heredity, by the possession of unusual ability, or otherwise, is generally regarded as the chief or head man of the village, but that the functions of such head man are rather those of a leading citizen whose influence is large and whose advice is likely to be followed than those of one who has been given and who exercises definite powers over or definite rights to represent his fellow villagers; that said villages have no counsel or other governing body, except said chief as aforesaid; and that the government in dealing with the Papago Indians as a whole or with the Indians in any village as a whole endeavors to have as many of the principal and influential men as possible meet with the Government officials, and in all instances endeavors to have all of the Indians understand the matter and tries to learn the will of all, or at least as many as possible of the adult male Indians of the tribe or of the village as the case may be; and affiant further says that neither the Papago tribe nor the individual Papago village communities have had much occasion to deal with outsiders and so there has been no reason for the creation of machinery for that purpose; and that affiant verily believes that there is and has been no organization of said tribe or of said villages, or any of them, that has been kept secret from him, and that the foregoing description of said tribe and communities is correct in respect to their organization or lack of it.

85 Affiant further says that, while the Papago Indians, from the standpoint of honesty, morality, mentality, habits of industry and thrift, ability to support themselves on the land they

occupy if uninterfered with by others, and desire for the education of their children, are among the best Indians in the United States, they are, with few exceptions, uneducated, speaking neither English nor Spanish, and only their own tongue, and are also, with few exceptions, in the opinion of affiant, wholly unfitted and incompetent to have the right to alienate the lands they occupy or any lands or to decide whether it would be for their best interest to institute litigation with respect to said land or the character of the title by which such lands should be held are also incompetent to control such litigation; and that the Indians of the said village of Santa Rosa, taking them as a whole, are especially backward in said respects.

Affiant further says that he has on several occasions, by holding a meeting with the Papago Indians in the year 1918, at which Indians from the village of Santa Rosa were present, and by inquiry of numerous individual Papago Indians, both of said village and of other villages, and otherwise, endeavored to find out whether the bringing of this suit was authorized or sought to be authorized in any way by the Papago Indians, or any of them, or was known of by them, and that as a result of said investigations, affiant verily believes that said suit was in no way authorized or attempted to be authorized or its bringing known by any Papago Indians now living or by any Indians who lived at the time of or several years before said suit was brought, or by any Papago Indians at all;

86 and affiant believes that said suit was brought by white men in the interest of white men, and not at all with the purpose of aiding the Papago Indians, or any of them, and that the interests of said Papago Indians are opposed to those of said white men, and that whatever pretended authority the said white men or any of them may have for the bringing of said suit is more than 30 years old and is connected with the so-called Hunter deeds which were made in the year 1880 and recorded in Pima County, Arizona, in the year 1914.

FRANK A. THACKERY,
Crow Agency, Montana.

Subscribed and sworn to before me this 18th day of January, 1919. Witness my hand and notarial seal the day and year first above written. My commission expires — —, — —.

[SEAL.]

EDWARD J. BOOS,

*Notary Public in and for the State of Montana,
Residing at Crow Agency, Montana.*

My commission expires February 28th, 1919.

EXHIBIT "A."

Affidavit of Pablo Commobabi.

* * * * *

STATE OF ARIZONA,

County of Pima, ss:

Pablo Commobabi, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 70 years old; that he was born and has lived all his life in the Papago Village of Ak Chin, one of the Santa Rosa Valley villages [Kiacheemuck, which is known as and called by white men, the Village of Santa Rosa],*

87 in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa village; nor does he believe any of the Indians of said village have ever heard of them.

PABLO (his x mark) COMMOBABI,

Deponent.

Witness- to mark:

WM. L. BOWIE,

Special Supervisor.

T. F. McCORMICK,

Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 18th day of January, 1919. The words "Ak Chin, one of the Santa Rosa Valley villages" interlined and the words "Kiacheemuck, which is known as & called by white men, the Village of Santa Rosa" erased before signing.

[SEAL.]

ISABEL M. LAUDER,

Notary Public.

My commission expires July 10, 1920.

I, Jose X Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSE X. PABLO,

Interpreter.

EXHIBIT "B."

Affidavit of Jose Bail.

* * * * *

COUNTY OF ARIZONA,

County of Pima, ss:

Jose Bail, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 42 years old; that he was born at Commobabi Village and has lived all his life in the Papago Village of Ak Chin, one of the villages in the Santa Rosa Valley [Kiachecmuck, which is known as and called by white men, the Village of Santa Rosa],* in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village; nor does he believe any of the Indians of said village have ever heard of them.

JOSE (his x mark) BAIL,
Deponent.

Witness- to mark:

WM. L. BOWIE,
Special Supervisor.

T. F. McCORMICK,
Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 18th day of January, 1919. The words "at Commobabi Village" and "Ak Chin
89 one of the Villages in the Santa Rosa Valley" interlined and the words "Kiachecmuck which is known as and called by white men, the Village of Santa Rosa" erased before signing.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

[*Word enclosed in brackets erased in copy.]

EXHIBIT "C."

Affidavit of Jose Juan.

* * * * *

STATE OF ARIZONA,
County of Pima, ss:

Jose Juan, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 56 years old; that he was born and has lived all his life in the Papago Village of Kiacheemuck, which is known as and called by white men, the Village of Santa Rosa, in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village; nor does he believe any of the Indians of said village have ever heard of them.

JOSE (his x mark) JUAN,
Deponent.

Witness- to mark:

WM. L. BOWIE,
Special Supervisor.

T. F. McCORMICK,
Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 17th day of January, 1919.
ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSE X. PABLO,
Interpreter.

EXHIBIT "D."

Affidavit of Juan Dios.

* * * * *

STATE OF ARIZONA,

County of Pima, ss:

Juan Dios, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 35 years old; that he was born and has lived all his life in the Papago Village of Ku Archi, one of the Santa Rosa Valley villages

91 [Kiacheemuck, which is known as and called by white men, the Village of Santa Rosa],* in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village, nor does he believe any of the Indians of said village have ever heard of them.

JUAN (his x mark) DIOS,
Deponent.

Witness- to mark:

WM. L. BOWIE,
Special Supervisor.

T. F. McCORMICK,
Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 18th day of January, 1919. The words "Ku Archi, one of the Santa Rosa Valley Villages" interlined, and the words "Kiacheemuck, which is known as and called by White men the Village of Santa Rosa," erased before signing.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

[*Word enclosed in brackets erased in copy.]

92

EXHIBIT "E."

Affidavit of Sacramento Papmose.

* * * * *

STATE OF ARIZONA,

County of Pima, ss:

Sacramento Papmose, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 60 years old; that at Ku Archi

he was born ^ and has lived all his life in the Papago Village of Kiacheemuck, which is known as and called by white men, the village of Santa Rosa, in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village, nor does he believe any of the Indians of said village have ever heard of them.

SACRAMENTO (his x mark) PAPMOSE,

Deponent.

Witness- to mark:

WM. L. BOWIE,

Sp'l Supervisor.

T. F. McCORMICK,

Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 17th day of January, 1919. The words "At Ku Archi" inserted before signing.

93

[SEAL]

ISABEL M. LAUDER,

Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

EXHIBIT "F."

Affidavit of Abram Pablo.

* * * * *

STATE OF ARIZONA.

County of Pima, ss:

Abram Pablo, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 35 years old; that he was born and has lived all his life in the Papago Village of Kiacheemuck, which is known as and called by white men, the Village of Santa Rosa, in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr.

94 Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village; nor does he believe any of the Indians of said village have ever heard of them.

ABRAM (his x mark) PABLO,
Deponent.

Witness- to mark:

WM. L. BOWIE,
Special Supervisor.

T. F. McCORMICK,
Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 17th day of January, 1919.

[SEAL.]

ISABEL M. LAUDER,

Notary.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

EXHIBIT "G."

Affidavit of Jose Alberto Ramoan.

STATE OF ARIZONA,

County of Pima, ss:

Jose Alberto Ramoan, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 37 years old; that

he was born and has lived all his life in the Papago Village of
 95 Kiacheemuck, which is known as and called by white men,
 the Village of Santa Rosa, in Pima County, Arizona; that
 before last spring he had never heard anything of any law
 suit about the lands the Papago Indians of Santa Rosa live on; that
 he never told anybody to bring any law suit about these lands, nor
 has he ever heard of any of his relatives or any of the Papago people
 telling anybody to bring any such law suit; that the first he ever
 heard of any law suit about these lands was when he was told so
 by Mr. Thackery and Mr. Bowie, both of the Indian Service, when
 he saw them in April and July, 1918; and that he does not know
 the lawyers claiming to represent the Papago Indians of the Santa
 Rosa Village; nor does he believe any of the Indians of said village
 have ever heard of them.

JOSE ALBERTO RAMON,
Deponent.

Witness:-

WM. L. BOWIE,
Special Supervisor.

T. F. McCORMICK,
Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 18th day of January, 1919.
 [SEAL.] ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was
 taken in my presence and was fully understood by the affiant at the
 time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

96

EXHIBIT "H."

Affidavit of Jose Xavier.

* * * * *

STATE OF ARIZONA,
 County of Pima, ss:

Jose Xavier, being first duly sworn, on his oath deposes and
 says that he is a Papago Indian, and is about 4 years old; that he
 was born and has lived all his life in the Papago Village of

Ak Chin, located in Santa
 [Kiacheemuck, which is known as and called by white men, the
 Rosa Valley, four miles south of the

Santa Rosa School House
 Village of Santa Rosa],* ^ in Pima County, Arizona; that before
 last spring he had never heard anything of any law suit about the

[*Words enclosed in brackets erased in copy.]

lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village; nor does he believe any of the Indians of said village have ever heard of them.

JOSE (his x mark) XAVIER,
Deponent.

Witness- to mark:

WM. L. BOWIE,
Special Supervisor.

T. F. McCORMICK,
Supt. Papago Indian Reservation.

97 Subscribed and sworn to before me this 17th day of January, 1919. The words "Ak Chin, located in Santa Rosa Valley, four miles south of the Santa Rosa School House" inserted and the words "Kiacheemuck, which is known as & called by white men, the Village of Santa Rosa" erased before signing.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

EXHIBIT "K."

Affidavit of Juan Pablo.

* * * * *

STATE OF ARIZONA,
County of Pima, ss:

Juan Pablo, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 38 years old; that he at Vamori Village four years was born [^] and has lived [all his life]* [^] in the Papago Village of Kiacheemuck, which is known as and called by white men, the Village of Santa Rosa, in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the

[*Words enclosed in brackets erased in copy.]

Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians of the Santa Rosa Village, nor does he believe any of the Indians of said village have ever heard of them.

JUAN PABLO,
Deponent.

Witness:-

WM. L. BOWIE,
Special Supervisor.
JOSÉ X. PABLO.

Subscribed and sworn to before me this 17th day of January, 1919. The words "at Vamori Village four years" interlined and the words "all is life" erased before signing.

[SEAL.]

ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

Deponent reads and understands the English language.

ISABEL M. LAUDER,
Notary Public.

EXHIBIT "J."

Affidavit of Marcelino Lopez.

* * * * *

STATE OF ARIZONA,
County of Pima, ss:

99 Marcelino Lopez, being first duly sworn, on his oath deposes and says that he is a Papago Indian, and is about 34 at Cababi Village

years old; that he was born [^] and has lived all his life in the Papago Village of Kiacheemuck, which is known as and called by white men, the Village of Santa Rosa, in Pima County, Arizona; that before last spring he had never heard anything of any law suit about the lands the Papago Indians of Santa Rosa live on; that he never told anybody to bring any law suit about these lands, nor has he ever heard of any of his relatives or any of the Papago people telling anybody to bring any such law suit; that the first he ever heard of any law suit about these lands was when he was told so by Mr. Thackery and Mr. Bowie, both of the Indian Service, when he saw them in April and July, 1918; and that he does not know the lawyers claiming to represent the Papago Indians

of the Santa Rosa Village; nor does he believe any of the Indians of said village have ever heard of them.

MARCELINO (his x mark) LOPEZ,
Deponent.

Witness- to mark:

WM. L. BOWIE,
Sp'l Supervisor.
T. F. McCORMICK,
Superintendent Papago Indian Reservation.

Subscribed and sworn to before me this 17th day of January, 1919. The words "at Cababi Village" interlined before signing.

[SEAL.] ISABEL M. LAUDER,
Notary Public.

My commission expires July 10, 1920.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

100

Affidavit of Pancho Lopez.

* * * * *

STATE OF ARIZONA,
County of Maricopa, ss:

Pancho Lopez, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 35 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Covered Wells, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who

[*Words enclosed in brackets erased in copy.]

101 claim to represent the Papago Indians are unknown to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

PANCHO (his x mark) LOPEZ,
Deponent.

Witness- to Mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 26th day of January, 1919. I certify that the word "three" on line 6, sheet 1, was erased before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, ———, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

Affidavit of Jose Juan.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Jose Juan, being first duly sworn on his oath, deposes and says: That he is a full-blood Papago Indian, and is about 25 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of

102 Covered Wells, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are

[*Words enclosed in brackets erased in copy.]

unknown to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

JOSE (his x mark) JUAN.

Witness- to mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on line 6, sheet 1, was erased before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, ———, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

103

Affidavit of Kunuto Lopez.

* * * * *

STATE OF ARIZONA,
County of Maricopa, ss:

Kunuto Lopez, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 44 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Cababi, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who

[*Words enclosed in brackets erased in copy.]

104 claim to represent the Papago Indians are unknown to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

KUNUTO (his x mark) LOPEZ.

Witness- to mark:

JOSÉ X. PABLO.
JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on sheet 1, line 6, was erased before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

Affidavit of Jose Juan.

* * * * *

STATE OF ARIZONA,
County of Maricopa, ss:

Jose Juan, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 44 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of
105 Cababi, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to

[*Words enclosed in brackets erased in copy.]

the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

JOSE (his x mark) JUAN,
Deponent.

Witness- to mark:

JOSE X. PABLO.
JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" was erased on line 6, sheet 1, before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

106 I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSE X. PABLO,
Interpreter.

Affidavit of John Lewis.

* * * * *

STATE OF ARIZONA,
County of Maricopa, ss:

John Lewis, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 25 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages"; that he also has a mountain home at the Indian settlement of Cababi, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to

107

the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

JOHN LEWIS.

Witness-:

JOSÉ X. PABLO.
JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on line 6, sheet 1, was erased before signing.

WILLIAM L. BOWIE,
Sp'l Supervisor, U. S. Indian Service.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

Affidavit of Jose San Pablo.

* * * * *

STATE OF ARIZONA,
County of Maricopa, ss:

Jose San Pablo, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 59 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages"; that he also has a mountain home at the Indian settlement of Brownell, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to

[*Words enclosed in brackets erased in copy.]

the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

JOSE (his x mark) SAN PABLO.

Witness- to mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on line 6, sheet 1, was erased before signing.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

109 I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

Affidavit of Alberto Antonio.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Alberto Antonio, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 30 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Covered Wells, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any law suit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such law suit; that this law suit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked

110 about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to the inhabitants of the Santa Rosa

[*Words enclosed in brackets erased in copy.]

valley settlements; that he himself knows nothing whatever about these men.

ALBERTO (his x mark) ANTONIO,
Deponent.

Witness- to mark:

JOSÉ X. PABLO.
JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on line 6, sheet 1, was erased before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

Affidavit of Val Lopez.

* * * * *

STATE OF ARIZONA,
County of Maricopa, ss:

Val Lopez, being first duly sworn on his oath deposes and
111 says: That he is a full-blood Papago Indian, and is about
25 years of age; that he was born in the Papago country
and has lived all his life in the Papago valley settlement known
to the Indians by the name of Kiacheemuck; that this is one of the
three Indian settlements located in the Santa Rosa valley in Pima
County, Arizona, and commonly known as and called by white
men the "Santa Rosa Villages;" that he also has a mountain home
at the Indian settlement of Covered Wells, where he resides during
the dry seasons, this being one of the settlements in which the
Papago Indians of the Santa Rosa valley reside during the dry
seasons; that he has never told any person to bring any law suit
about the lands surrounding the valley settlement in which he re-
sides, nor has he ever heard of any of his relatives, or any of the
Papago Indians telling anybody to bring any such law suit; that
this law suit was first heard of by him after the American Indian
officials told his people about it last year; that since that time the
matter has been much talked about among the Indian inhabitants
of the Santa Rosa valley settlements and he knows that the Indians
of these villages deny that any person was requested or authorized
to bring any action of any kind in court in the name of any of
these settlement; that as far as he knows these lawyers who claim
to represent the Papago Indians are unknown to the inhabitants

of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

VAL LOPEZ.

Witness- to signature:

JOSÉ X. PABLO.
JOSEPHINE M. BOWIE.

112 Subscribed and sworn to before me this 26th day of January, 1919. I certify that the word "three" on line 6, page 1, was erased before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

Affidavit of Jonah Maria.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Jonah Maria, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 30 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Brownell, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any law suit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any
113 of his relatives, or any of the Papago Indians telling any body to bring any such law suit; that this law suit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to the inhabitants of the Santa Rosa

[*Words enclosed in brackets erased in copy.]

valley settlements; that he himself knows nothing whatever about these men.

JONAH (his x mark) MARIA.

Witness- to mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on page 1, line 6 was erased before signing.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

114

Affidavit of Gabriel Lopez.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Gabriel Lopez, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 26 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Brownell, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are

[*Words enclosed in brackets erased in copy.]

unknown to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

GABRIEL (his X mark) LOPEZ.

115 Witness- to mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 26th day of January, 1919. I certify that the word "three" on page 1, line 6, was erased before signing.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

Affidavit of Ramoan Verma.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Ramoan Verma, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 40 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Covered Wells, where he resides during the dry seasons, this being one of the settlements in which the Papago

116 Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to

[*Words enclosed in brackets erased in copy.]

represent the Papago Indians are unknown to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

RAMOAN (his X mark) VERMA.

Witness- to mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 26th day of January, 1919. I certify that the word "three" was erased on line 6, sheet 1, before signing.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

117

Affidavit of Ramoan Cruz.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Ramoan Cruz, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 35 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Brownell, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown

[*Words enclosed in brackets erased in copy.]

118 to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

RAMOAN (his X mark) CRUZ.

Witness- to mark:

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 26th day of January, 1919. I certify that the word "three" on page 1, line 6 was erased before signing.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

I, ———, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

Affidavit of Jose Mariana.

STATE OF ARIZONA,

County of ———, ss:

Jose Mariana, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 25 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Kiacheemuck; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the

119 "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Covered Wells, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to the inhabitants of the

[*Words enclosed in brackets erased in copy.]

Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

JOSE (his X mark) MARIANA.

Witness- to mark:

JOSE X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 26th day of January, 1919. I certify that the word "three" line 6 sheet 1, was erased before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSE X. PABLO,
Interpreter.

120

Affidavit of Antonio Lopez

COUNTY OF PINAL,

State of Arizona, ss:

Antonio Lopez, being first duly sworn, on oath deposes and says:

My name is Antonio Lopez. I am about 35 years of age. I am a full-blood Papago Indian, and reside at Kiacheemuck, one of the Santa Rosa Valley villages. I have my fields there, but live during the dry seasons at Noipot, a mountain Papago village. I have had a home at Kiacheemuck all my life. I am now with a large number of my people at Florence, Arizona, where we are engaged in picking cotton. We have constructed a number of houses on a hill near Florence where we live while picking cotton and working in the cotton fields. All the inhabitants of our little village here have homes at Kiacheemuck. We have been here in Florence about one month at this time. There are about fifty adult male persons who are here at the present time with us,—all being from Kiacheemuck.

At the request of Mr. Bowie of the Indian Bureau, I called a council of the male inhabitants of this temporary village here on Thursday night last, January 23rd, to consider the matter of a law suit or some court action which you stated had been brought in Washington, D. C., in the name of the "Santa Rosa Village or Pueblo". Your interpreter told us that some lawyers had told the white judges in Washington, that the Santa Rosa Indians had sent them to say what they had to tell the court. Your interpreter is Jose X. Pablo.

I was present at the council of my people here on last Thursday night, as stated, and I know that the inhabitants there assembled all answered that this matter was entirely new to them and that they had not authorized these lawyers above mentioned or any other person to bring suit in court of any kind, and that they knew nothing whatever about these lawyers. I acted as spokesman

for my people at this meeting, and I have since talked with the few who were not present, and I know that they all say the same thing, that is that they know nothing about these lawyers and did not authorize them to bring this suit in court. My people have delegated me to make this statement for them all. They know nothing about signing papers or white peoples ways, so they prefer that I sign for them all. We regard Konorone as our chief, and we asked you to see him, and get him to sign for us. You tell me that he signed a statement, but that it will not do for all my people here, and that Konorone was not well enough to come here with you and meet with us. So I make this statement for my people here.

I have heard this statement interpreted to me by Jose X. Pablo, stockman and interpreter for the Government on the Papago Reservation; I have understood it; and it is correct.

ANTONIO (his x mark) LOPEZ,
Deponent.

Witness- to mark:

JOSE X. PABLO.

JOSEPHINE M. BOWIE.

Sworn to and subscribed before me this 28th. day of January 1919, at Florence, Ariz.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, certify that I interpreted into 122 the Papago language the above and foregoing affidavit of three pages to Antonio Lopez, and that he fully understood the contents thereof before he signed it.

JOSE X. PABLO,
Interpreter.

Affidavit of Konorone.

STATE OF ARIZONA,
County of Pinal:

Konorone being first duly sworn, on oath deposes and says:

My Papago name is Konorone; I am about 75 or 80 years of age; my home is at Kiacheemuck, one of the villages of the Santa Rosa Valley. I have been leading man, or chief, of the villages of Archi and Kiacheemuck for many years, since I was a young man. Our leaders are called principal men, and I remember Louis who many years ago was also a leading man. He lived below Kiacheemuck, at Qewwa, which means "lower down",—that is, where Archi is. I was a leading man at the same time as Louis. Kiacheemuck and Archi, or Qewwa as it is also called, are close together, and have had the same leaders since I was a young man.

I have heard my people talk about a suit which they have been told about recently, which some lawyers brought in the name of the "Pueblo of Santa Rosa", and about a deed which some white man says was signed by Louis, deeding him one-half interest in a large tract of land around the "Santa Rosa Valley villages". I know that

my people all say that they never heard of these lawyers or this deed before they were told about it by American Indian officials last year, and I know that they did not authorize any person to bring this suit. My people have always made it a practice to discuss matters of importance concerning their villages in council, and nothing affecting the inhabitants as a whole has ever been done within my memory except after discussing it in council, the leading men being advised by the inhabitants in council what to do. I know that in my lifetime, since I have been old enough to remember anything, that no matter connected with the sale or transfer of any of the lands of my villages was ever even discussed in council by the inhabitants thereof.

This statement has been read to me by Jose X. Pablo and interpreted by him, I have understood it, and it is correct.

KONORONE (his mark).

Witness:-

WM. L. BOWIE,

Special Supervisor, Indian Bureau.

JOSEPHINE M. BOWIE.

Sworn to and subscribed before me this 24th. day of January 1919.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, hereby certify that this affidavit was taken in my presence, and was interpreted by me to affiant in the Papago Language, before signing by him.

JOSÉ X. PABLO,

Interpreter.

124 *Affidavit of Roy Williams.*

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Roy Williams, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 29 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Ak Chin; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona, and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Ort Vahe, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or

[*Words enclosed in brackets erased in copy.]

any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to the inhabitants of
 125 the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

ROY WILLIAMS.

Witness:-

JOSÉ X. PABLO.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of January, 1919. I certify that the word "three" on line 6, sheet 1, was erased before signing.

WILLIAM L. BOWIE,

Special Supervisor, U. S. Indian Bureau.

I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,

Interpreter.

Affidavit of Santiago Venito.

* * * * *

STATE OF ARIZONA,

County of Maricopa, ss:

Santiago Venito, being first duly sworn on his oath deposes and says: That he is a full-blood Papago Indian, and is about 25 years of age; that he was born in the Papago country and has lived all his life in the Papago valley settlement known to the Indians by the name of Archi; that this is one of the [three]* Indian settlements located in the Santa Rosa valley in Pima County, Arizona,
 126 and commonly known as and called by white men the "Santa Rosa Villages;" that he also has a mountain home at the Indian settlement of Covered Wells, where he resides during the dry seasons, this being one of the settlements in which the Papago Indians of the Santa Rosa valley reside during the dry seasons; that he has never told any person to bring any lawsuit about the lands surrounding the valley settlement in which he resides, nor has he ever heard of any of his relatives, or any of the Papago Indians telling anybody to bring any such lawsuit; that this lawsuit was first heard of by him

[*Words enclosed in brackets erased in copy.]

after the American Indian officials told his people about it last year; that since that time the matter has been much talked about among the Indian inhabitants of the Santa Rosa valley settlements and he knows that the Indians of these villages deny that any person was requested or authorized to bring any action of any kind in court in the name of any of these settlements; that as far as he knows these lawyers who claim to represent the Papago Indians are unknown to the inhabitants of the Santa Rosa valley settlements; that he himself knows nothing whatever about these men.

SANTIAGO (his x mark) VENITO,
Deponent.

Witness- to mark:

WM. L. BOWIE.

JOSEPHINE M. BOWIE.

Subscribed and sworn to before me this 25th day of Jany., 1919. I certify that the word "three" was erased on page 1, line 6, before signing.

WILLIAM L. BOWIE,
Special Supervisor, U. S. Indian Bureau.

127 I, Jose X. Pablo, interpreter, hereby certify that this affidavit was taken in my presence and was fully understood by the affiant at the time he signed and swore to it.

JOSÉ X. PABLO,
Interpreter.

Affidavit of Jose X. Pablo.

* * * * *

STATE OF ARIZONA,
County of Pima, ss:

Jose X. Pablo, who being first duly sworn, on oath deposes and says:

That he is a full-blood Papago Indian, and resides at Indian Oasis on the Papago Indian Reservation; that he is 37 years of age; that he is a graduate of the Presbyterian Training School at Tucson, and understands the English language, being able to read and write in such language; that he learned the Papago language in childhood and has made constant use of it all his lifetime, having always lived among Papago Indians; that he is well acquainted with the country in which the Papago Indians reside in Southern Arizona, having made his home there since childhood; that he knows that the name "Santa Rosa" was not applied by the Papago Indians to any particular village of the Papago country at any time since he attained an age of recollection of events, but was a name used by Mexicans and Americans to designate the three villages in the Santa Rosa Valley, located within a radius of a few miles of each other,
128 and known by the Papago Indians by the following names: Ak Chin, Kiacheemuck, and Archi or Kuarchi; that these

villages represent three separate settlements of Papago Indians; that for the reason that the white persons and Mexicans in the country could not understand the Indian names of these villages, they commonly designated them as "the Santa Rosa Villages"; that the Indians followed this custom when talking to Americans or Mexicans, but always used the Indian names of these villages, as set out above, when talking among themselves; that since the erection of the school at Kiacheemuck by the Indian Bureau, about two years ago,—a well being completed about the same time, these objects have become a landmark, and practically all persons who speak English now know that particular village as "Santa Rosa." The name Santa Rosa is of Spanish or Mexican origin. I have read this statement, and it is correct.

JOSÉ X. PABLO,
Defendant.

Sworn to and subscribed before me this 18th day of January, 1918.
[SEAL.] ISABEL M. LAUDER,
Notary Public.

My Commission expires July 10, 1920.

Memorandum.

July 19, 1920.—Appearance of Christopher B. Garnett, Special Assistant to the Attorney General, for defendants filed.

Order Substituting Defendant.

Filed June 19, 1920.

* * * * *

This day came the parties by their attorneys, and it being suggested to the court that the defendant Franklin K. Lane had resigned his office as Secretary of the Interior, and that John
129 Barton Payne had been appointed and had qualified as his successor in that office, and it appearing that the said Franklin K. Lane was made a party defendant in this cause solely in his official capacity as Secretary of the Interior, it is hereby ordered that the said John Barton Payne, as Secretary of the Interior, be substituted as a party defendant herein in the place and stead of the said Franklin K. Lane.

F. L. SIDDON, —
Justice Supreme Court of the —.

June 19, 1920.

Affidavit of W. T. Day, Jr.

Filed June 19, 1920

* * * * *

STATE OF ARIZONA,
County of Pinal, ss:

W. T. Day, Jr., being first duly sworn on his oath deposes and says:

That he is of the age of forty-four years and resides at Quijotoa, Arizona, his said residence being located near the Santa Rosa Valley, about eighteen miles from a group of Indian Villages or settlements known as the Pueblo of Santa Rosa, the same being occupied by Papago Indians, and being situated in the County of Pima, State of Arizona.

That there is located in said Pima County, State of Arizona, about twenty miles from Quijotoa, and about thirty-five miles from said Pueblo of Santa Rosa, an Indian Agency of the United States Government, established by the Department of the Interior of the United States; that the said Agency is in charge of a Superintendent who exercises or claims to exercise authority over said Papago Indians.

That affiant has resided in said place for a period of about twenty-six years last past and during said times he has been engaged
130 in the occupation of mining and of dealing in general merchandise; that during the greater portion of said time affiant has traded with and employed many of said Papago Indians; that affiant is now and for many years has been familiar with the customs, habits and language of said Indians and that he is now and for many years has been able to understand and speak fluently the language of the said Papago Indians.

That for many years the said Papago Indians, including the head men and chiefs of said Pueblo of Santa Rosa, and of other Papago Indian villages, have confided in affiant and have talked and discussed their affairs with him freely.

That sometime during the year 1910 affiant learned that the head men and chiefs of said Papagos, including those of the said Pueblo of Santa Rosa, had in the year 1880 given a power-of-attorney to one Robert F. Hunter of Washington, District of Columbia, authorizing the said Robert F. Hunter to act in behalf of said Papago Indians and to represent them in their affairs with the United States Government; that thereafter, to wit, sometime during the year 1914, affiant learned that the representatives of the said Robert F. Hunter were considering the bringing of a suit in the name of and on behalf of said Pueblo of Santa Rosa and on behalf of the Indians residing therein, against the Department of the Interior of the United States and others, to prevent encroachment by the said defendants upon the lands of said Papagos.

That shortly thereafter, at the request of the representatives of the

said Robert F. Hunter, affiant herein informed various Papago Indians of the proposal to bring said suit; that the name of the
131 Indians so communicated with, were the following: Francisco Ochoa, Juan Capital, Jose Castro, Ben Johnson, Albino, Hasunwa, Jose Anton, Pancho, Jose Pablo, Juan Jose, Juan Thomas, Santiago Benito, Antonio, Manuel Antonio, Jose Luis, and many others whose names affiant does not now remember.

That the majority of said Indians resided in the said Pueblo of Santa Rosa, and the others on adjacent lands of the Papagos; that all of said Indians so communicated with by affiant and have a good understanding of ordinary business affairs and particularly of matters concerning their interests and know the value of money and of property belonging to them and in which they deal; that the said Papago Indians have universally and invariably, at all times within the recollection of this affiant claimed that the land of said Santa Rosa village and the adjacent territory belonged to the Papago Indians, and that the United States Government had no right to the same.

That during the month of January, 1920, affiant in company with one C. B. Guittard, representative of the said Robert F. Hunter and of the heirs of the said Robert F. Hunter, went among said Indians for the purpose of discussing the above entitled action and of ascertaining what testimony could be obtained in behalf of the plaintiff therein; that at the said time affiant conversed with the following Indians regarding the same: Francisco Ochoa, Juan Capitan, Jose Pablo, Juan Jose, San Jose, Manuel Antonio, and also with many others, and the said Indians told affiant that word had been sent them by the Indian Agent of the United States Government not to talk to said Guittard in regard to said suit; said Indians also
132 stated in effect that while they had known about the suit from its beginning and had approved of the same, and while the inhabitants of the Santa Rosa village generally had so known of and approved of the said suit, that they would not sign any affidavits stating such facts because of their said instructions from the Indian agent and for the reason that they were afraid to disobey him, or words to that effect.

That affiant also on or about said time talked with a certain Papago Indian named Antonio Lopez who said that he was one of the Indians who had signed an affidavit in this action sometime during the month of January, 1919, and that other Indians had signed similar affidavits on or about the same date, were chiefs, captains or leading men of the Papagos; that the said Indians and all of the same with whom affiant communicated regarding the bringing of said suit agreed to the bringing of the same and expressed their approval thereof.

That many of them stated to affiant that the Superintendent of the Indian Agency of the United States Government located on the

Papago's land had urged them to take up new allotments of land from the United States Government
W. T. D., Jr. and that the said agents were interfering with their governmental affairs and that the said Indians were glad that the suit was to be brought; that affiant believes from his conversations with

said Indians at said time and subsequent thereto that the bringing of said suit and its said objects and its purposes was generally known among the Indians of the said Pueblo of Santa Rosa and of the other Papago Indian villages, and that the bringing of

W. T. D., Jr. said action was Generally approved by said Indians.

133 That the Indians with whom affiant communicated regarding the said suit knew of the said power-of-attorney of said Robert F. Hunter given by the chiefs and head men and affiant never heard any of said Indians with whom he communicated or any Papago Indian at any time disapprove of the giving of the said power-of-attorney, and affiant verily believes that the said Papago Indians of the said Pueblo of Santa Rosa

W. T. D., Jr. generally approved of the same.

That for many years it has been the custom of the Papago Indians of said Pueblo of Santa Rosa and of the other villages to permit and authorize their chiefs and head men to transact all business for and in behalf of or affecting their respective Pueblos and the inhabitants thereof as a whole; and that business of such character was generally transacted by such chiefs or head men.

That the said Papago Indians are generally intelligent and that said affidavits were prepared and presented to them by the said agent of the United States Government, and that they signed them because they were so requested and that they thought it best to comply with such request, for the reason that said Indian agent claimed to have authority over them, or words to that effect.

That this affiant verily believes that the affidavits of the Papago Indians above mentioned were signed and executed by them wholly by reason of the influence exerted over said Indians by the United States Indian agent.

That affiant herein has no interest whatsoever, either directly or indirectly, in the above entitled action or in the result of the same.

W. T. DAY, JR.

134 Subscribed and sworn to before me this 3rd day of June, 1920: And I certify that the erasures and corrections made in lines 7, 8, 15, and 23 of page four of said affidavit were made by the affiant, W. T. Day, Jr., and initialed by him before the said affidavit was signed.

[SEAL.]

A. A. JAYNE,
Notary Public.

My commission expires May 6th, 1922.

Affidavit of C. B. Guittard.

Filed June 19, 1920.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

C. B. Guittard being first duly sworn, on oath deposes and says:

That he is of the age of forty-four years, and that he resides in the city of Glendale, County of Los Angeles, State of California.

That during the past ten years he has made about ten trips into that part of the State of Arizona, inhabited by the Papago Indians, to wit: Pinal, Pima and Maricopa Counties, in said State of Arizona; that the purpose of affiant in visiting the said country was to become acquainted with the said Papago Indians and to become informed as to their manners, habits, traditions, customs and history; also as to the boundaries of the tracts of land owned by them; that on each of these visits affiant visited that portion of the Papago country known as the Santa Rosa Valley; that in said valley is located a group of

Indian villages or settlements known as the Pueblo of Santa Rosa, the said villages being occupied by Papago Indians; that during all the time that affiant has been acquainted with said Santa Rosa Valley, the Indians of said Pueblo of Santa Rosa have claimed to own, and have been in actual possession of and have occupied all that certain parcel of land situate in the County of Pima and Pinal, State of Arizona, bounded and described as follows:

Commencing at a point or place known as Kabitque Mountain, Logia plain; thence running south a distance of twenty-four miles more or less to a point or place known as Okama or Okomo; thence running west a distance of twenty-four miles more or less to a point or place known as Mescalero; thence running north a distance of thirty miles more or less to a point or place known as Sierra Cabeza; thence running east a distance of thirty miles more or less to the point or place of beginning; and containing an area of seven hundred and twenty square miles more or less.

That during all of said time said land was exclusively and actually occupied and possessed by the said Indian inhabitants of the Pueblo of Santa Rosa; that affiant was informed that said inhabitants have, from time immemorial, occupied and used said lands for the purpose of agriculture and grazing, and have resided thereon.

That affiant has a general knowledge and understanding of the Papago language, and also can speak and understand Spanish; that during his various visits to said Papago country, affiant herein interviewed and conversed with in Spanish, English or in the Papago language the following named Indians: Juan (Papago-Chuhuwa)

over seventy years old, Apolonio Miranda, about forty-five years old, Luis Ortega, over sixty years old, Jose Juan, over eighty years old; Jose Tapia, about sixty years old, Cucharron,

about seventy years old, Jose Jesus, about seventy years old, Antonio, about seventy years old, Juan Chico, about seventy years old, Jose Juan, Captain of Tecolote, between sixty and seventy years old, Antonio, about sixty years old, Simmake, over seventy years old, Nacho, about sixty years old, Seviliano, over seventy years old, Chenato Perro, over seventy years old, Francisco Ochoa, Juan Capitan, Jose Castro, Ben Johnson, Albino, Jose Anton, Pancho, Jose Pablo, Juan Jose, Juan Thomas, Santiago Benito, Antonio, Manuel Antonio, Jose Luis, and many others whose names—

That affiant was informed by various of said Papago Indians that the boundaries of said Santa Rosa valley, as above set forth have, from time immemorial, been definitely fixed, known and recognized, and are marked by definite and recognized natural monuments, and the extent of the claim of ownership and possession of said lands have always been defined by said boundaries.

That affiant was informed by said Indians that the said group of villages had always been known by the common name of the Pueblo of Santa Rosa, and that affiant knows the said Indians thereof to be civilized Indians, following agricultural and pastoral pursuits; that they dwell in houses of a permanent character and of substantial construction, the same being in a fixed and permanent location, built upon the lands of said Pueblo of Santa Rosa; that affiant was informed by said Indians and by various old white inhabitants of Arizona, of whom he made inquiries, that the said Papago Indians had for many years prior thereto, and prior to the time

137 that the said territory was acquired by the United States from Mexico, occupied and inhabited the said lands hereinbefore described, and that said Indians had always claimed to own the same; that affiant was told by said Indians that they had in the past governed themselves and their town community in accordance with definite laws and customs, having the force of laws, which laws they had, from time immemorial obeyed, and that at intervals and from time immemorial the said Papago Indians had assembled together in common council, composed of the adult inhabitants of the villages, and of the heads of families; and that it was the business of said councils to determine all matters concerning the town community and its inhabitants, and at such assemblies they had elected captains or chiefs, who were authorized by said assemblies to act for and on behalf of all the inhabitants of said villages or Pueblo; that the captains had authority to act for the people of their respective village at all times; that the business affairs of the Pueblo were carried on by the captains, who had full authority to act in all matters. The captains usually served during their lifetime or good behavior.

That affiant herein has at various times, both before and since the bringing of the above entitled action, discussed the same with various Papago Indians, both personally and with the assistance of an interpreter, and affiant knows that at all of said times the said Papago Indians in general, and the captains and chiefs in particular, had full and complete knowledge of the same, and that

at all times the said Papago Indians residing in said Pueblo of Santa Rosa generally approved the bringing and prosecution of said action, and the objects thereof.

138 That affiant has been informed by various of said Papago Indians that the said Pueblo of Santa Rosa has from time imemorial, claimed and exercised the right to have a common name, to wit, the name of the Pueblo of Santa Rosa, the right to take, hold, manage, control and dispose of real and personal property, including the lands upon which the said village is situated, and the surrounding lands, and the right and power to contract, and otherwise act as a whole, by action of its common council, composed of its adult inhabitants and heads of families, and through its captains and chiefs in all matters concerning the interests of said inhabitants; also the right and power to maintain a permanent town organization and government, and to make rules and laws binding upon the inhabitants of said Pueblo of Santa Rosa, and to be controlled and managed by its inhabitants, acting together according to their rules, and to elect and keep in office, captains, chiefs or other officers and to exercise such other powers as might be necessary for the promotion of the interests of the inhabitants of said Pueblo of Santa Rosa.

C. B. GUITTARD.

Subscribed and sworn to before me this 29th day of May, 1920.

[SEAL.]

VERA S. BATTY,

*Notary Public in and for the County of
Los Angeles, State of California.*

My commission expires Jan. 18, 1923.

139

EXHIBIT.

*Authenticated Copy of Record Showing Probate of Will of
Robert F. Hunter.*

Filed June 19, 1920.

In the Superior Court of the State of California in and for the
County of Los Angeles.

In the Matter of the Estate of ROBERT F. HUNTER, Deceased.

Certificate of Proof of Will and the Facts Found.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, James C. Rives Judge of said Superior Court, do hereby certify that on the 25th day of March A. D. 1912, the annexed instrument was admitted to Probate as the last Will and Testament of Robert F. Hunter deceased, and from the proofs taken and the examination had therein, the said Court finds as follows:

That said Robert F. Hunter died on or about the 19th day of February A. D. 1912, in the County of Los Angeles State of California; that at the time of his death he was a resident of the County of Los Angeles, State of California; that the said annexed Will was duly executed by the said decedent, in his lifetime, in the County of Los Angeles, State of California and signed by the said testator in the presence of T. T. Hines of Los Angeles, Calif., S. C. Penney of Los Angeles, Calif. the subscribing witnesses thereto; also that he acknowledged the execution of the same in their presence, and declared the same to be his last Will and Testament, and the said witnesses attested the same at his request in his presence and in the presence of each other; that the said decedent, at the 140 time of executing said Will, was of the age of eighteen years and upwards, was of sound and disposing mind, and not under duress, menace, fraud or undue influence, nor in any respect incompetent to devise and bequeath his estate.

In witness whereof, I have signed this Certificate and caused the same to be attested by the Clerk of said Court, under the seal thereof, this 25th day of March, 1912.

JAMES C. RIVES,
Judge of the Superior Court.

Attest:
[SEAL]

H. J. LELANDE,
Clerk,
By J. F. DEVIN,
Deputy.

No. 20491.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court, do hereby certify the foregoing to be a full, true and correct copy of the original Certificate of Proof of Will and the Facts Found in the Matter of the Estate of Robert F. Hunter deceased, as the same appears of record, and that I have carefully compared the same with the original.

In witness whereof, I have hereunto set my hand and affixed the seal of the Superior Court, this 29th day of March, 1920.

[SEAL.]

L. E. LAMPTON,
County Clerk,
By NAOMI ANDERSON,
Deputy.

141 (Endorsed:) Filed Mar. 26, 1912. H. J. LeLande, by
J. F. Devin, Deputy. Book 63, Page 113. Compared by
G. D. Silberberg.

(U. S. Rev. St., Sec. 905.—Attestation of Clerk, Certificate of Judge, and Certificate of Clerk to Official Character of Judge.)

No. 20491.

In the Matter of the Estate of ROBERT F. HUNTER, Dec'd.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, L. E. Lampton, County Clerk of the County of Los Angeles, State of California, and ex-officio Clerk of the Superior Court of Los Angeles County, State of California, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Certificate of Proof of Will And the Facts Found and that I have carefully compared the same with the original.

In witness whereof, I have hereunto set my hand and annexed the Seal of the Superior Court of Los Angeles County, State of California, this 29th day of March, 1920.

[SEAL.]

L. E. LAMPTON,
*County Clerk of the County of Los Angeles,
State of California, and ex Officio Clerk
of the Superior Court of Los Angeles
County, State of California.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

142 I, Dana R. Weller, Judge of the Superior Court of Los Angeles County, State of California, do hereby certify that L. E. Lampton is County Clerk of the County of Los Angeles, State of California, and ex-officio Clerk of the Superior Court of Los Angeles County, State of California, (which Court is a Court of Record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said L. E. Lampton as such officer; that the seal annexed thereto is the seal of said Superior Court; that said L. E. Lampton as such Clerk, is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of California.

In witness whereof, I have hereunto set my hand in my official character as such Judge, at the City of Los Angeles, County and State aforesaid, this 29th day of March A. D. 1920.

DANA R. WELLER,
*Judge of the Superior Court of Los
Angeles County, State of California.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, L. E. Lampton, County Clerk of the County of Los Angeles, State of California, and ex-officio Clerk of the Superior Court of Los Angeles County, State of California (which Court is a Court of

Record, having a seal, which is annexed hereto), do hereby certify that Dana R. Weller whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the Superior Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I

do further certify that the signature of the Judge above named
143 to the said certificate of due attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the Seal of the Superior Court, at my office in said County, this 29th day of March A. D. 1920.

[SEAL.]

L. E. LAMPTON,
*County Clerk of the County of Los Angeles,
State of California, and ex Officio Clerk of
the Superior Court of Los Angeles County,
State of California.*

(Clerk—Official Capacity—Exemplified Copy.)

Memorandum of Court.

Filed February 28, 1921.

* * * * *

This case has been under consideration by the Court upon a motion by the defendants to dismiss the cause upon the ground that it was brought without authority, and the motion is supported by a number of affidavits. The defendants also introduced some evidence in support of the motion. Counter affidavits have also been submitted in behalf of the plaintiff. Oral arguments have also been made by counsel of record for the respective parties and exhaustive briefs submitted by said Counsel. The motion, affidavits, evidence, arguments and briefs have received careful consideration by the Court and it remains to announce the conclusion reached upon the motion.

It should be borne in mind that this case has been to the Court of Appeals and the Supreme Court upon a decree of this Court dismissing the Bill of Complaint, thereby sustaining a prior motion
144 tion of the defendants to dismiss the bill for want of Equity.

Both the Court of Appeals and the Supreme Court agreed that the decree of dismissal should be reversed and the Supreme Court remanded the case to this Court

"with directions to overrule the motion to dismiss, to afford the defendants an opportunity to answer the bill, to grant an order restraining them from in any wise offering, listing or disposing of any of the lands in question pending the final decree, and to take such further proceedings as may be appropriate and not inconsistent with this opinion."

From the foregoing quotation it will be seen that this Court was required to grant an order restraining the defendants from in anywise

offering, listing, or disposing of any of the lands in question pending the final decree. It also gave the defendants an opportunity to answer the Bill of Complaint, something that the Court of Appeals had denied to them in its decision.

The present motion to dismiss avers that knowledge of the alleged want of authority to institute this suit reached the defendants while the case was pending on appeal in the Supreme Court and thereupon the Solicitor-General called upon Counsel appearing for the plaintiff to furnish him with their authority for bringing it. Under date of January 9, 1919 they transmitted to him copies of a power of attorney and substitution under such power, which they state conferred the authority in question.

The case was reached for argument in the Supreme Court, and was argued on January 29, 1919, about twenty days *after* the receipt by the Solicitor-General of the documents mentioned. The decision of the Court was announced a month later, that is to say, on March 3,

1919. It does not appear that the alleged want of authority 145 on the part of Counsel claiming to represent the plaintiff herein, was called to the attention of the Supreme Court, and that tribunal held, on the record before it, that the plaintiff had the necessary capacity or competency to sue. It may well be that Counsel for the defendants wished to investigate further the claim of authority, before challenging it, as they now do, but it may be remarked that they now insist that the want of authority appears upon the face of the documents furnished to the Solicitor-General by Counsel claiming to represent the plaintiff, as above set forth.

The contentions on behalf of the motion to dismiss take a wide range and at points may be said to reach the merits of the case. Were it granted an appeal would no doubt follow, and if on appeal the order of dismissal was reversed the parties litigant would be no nearer a final determination of the rights asserted in the Bill of Complaint than they were when the case previously began its appellate course.

The case is one which, it seems to the Court, calls for a complete judicial investigation and a final determination, especially in view of the careful consideration given to it heretofore by the appellate tribunals, and it would be unfortunate if it were now to go off on a question of a want of authority to institute the present proceeding. And yet grave reasons have been presented in support of the pending motion that should not lightly be brushed aside, or disposed of at this time. Nor need they be.

The defendants have answered the Bill of Complaint and a final hearing can take place in which all contested matters, or such of them 146 as the Court may consider necessary for a just determination of the case, can be adjudicated. If this course is taken, it will not deprive the defendants of the right to press the grounds set up in support of the pending motion, and it will be in harmony with the directions of the Supreme Court in sending the case back to this Court.

It will also tend to relieve the situation of any criticism that might be levelled at the failure to bring to the attention of the Supreme

Court the alleged want of authority for the institution of the suit, and in all probability hasten the period when there may be reached a final, authoritative end of the controversy.

The decision of the motion to dismiss will be postponed until the final hearing of the cause, and an order to this effect will be signed on notice and presentation.

F. L. SIDDON, *Justice.*

February 28, 1921.

Order Postponing Decision.

Filed April 15, 1921.

* * * * *

On consideration of the motion to dismiss heretofore filed by the defendants and after the same has been argued and submitted with accompanying papers and affidavits filed of record and briefs of counsel and the motion and arguments having been duly considered, it is this 15th day of April, A. D. 1921,

Adjudged and ordered that the decision of the motion to dismiss be, and the same is hereby, postponed until the final hearing of the cause.

By the Court:

F. L. SIDDON, *Justice.*

147 *Order Substituting Parties Defendant.*

Filed February 24, 1922.

* * * * *

This day came the parties by their attorneys, and it being suggested to the court that the term of the defendant, John Barton Payne, as Secretary of the Interior has expired and that Albert B. Fall has been appointed and has duly qualified as his successor in that office, and it appearing that the term of the defendant, Clay Tallman, as Commissioner of the General Land Office has expired and that William S. Spry has been appointed and has duly qualified as his successor in that office, and it appearing that both of said defendants, John Barton Payne and Clay Tallman, are parties defendant in this cause solely in their official capacity as Secretary of the Interior and Commissioner of the General Land Office respectively, it is this 24 day of February, A. D. 1922,

Adjudged and ordered that Albert B. Fall as Secretary of the Interior be, and he is hereby, substituted as a party defendant herein in the place and stead of said John Barton Payne, and that William S. Spry as Commissioner of the General Land Office be, and he is hereby, substituted as a party defendant herein in the place and stead of said Clay Tallman.

By the Court:

JENNINGS BAILEY, *Justice.*

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I consent to the entry of this order.

• JAMES M. BECK,
Solicitor General, Attorney for Defendants.
HENRY P. BLAIR,
Attorney for Plaintiff.

148 *Stipulation for Hearing of Cause.*

Filed May 26, 1922.

* * * * *

It is hereby stipulated and agreed between counsel for the respective parties that with the consent of the court this cause may be advanced for hearing on Monday, October 9, 1922, and that an order to that effect, based on this stipulation, may be obtained herein with the consent of the court as soon as the case shall have been duly calendared.

HENRY P. BLAIR,
Attorney for Plaintiff.
W. D. RITER,
Ass't Atty. General, Attorney for Defendants.

Stipulation as to Testimony.

Filed July 25, 1922.

* * * * *

It is hereby stipulated by and between the parties hereto through their respective counsel, that the time for closing the testimony of the plaintiff by deposition be extended to and including the 22nd day of August, 1922, and that the Court may make an order to this effect without counsel for the defendant being present. Notice of such motion and order is hereby expressly waived.

Dated July 13th, 1922.

HENRY P. BLAIR,
By LOUIS KLEINDIENST,
Atty. for Plaintiff.
GEORGE A. H. FRASER,
Atty. for Defts.

149 *Memorandum of Court.*

Filed May 22, 1924.

* * * * *

On submission after final hearing on merits and upon motion to dismiss.

This case came on for final hearing, and several weeks were occupied in the introduction of evidence, the reading of depositions theretofore taken, and with able and exhaustive arguments of counsel for the respective parties, and it was then submitted for deter-

mination, with leave to file briefs. These were later filed and they exhibit the thoroughness with which the case has been prepared and presented by counsel.

Since the original bill was filed the case has been to the Supreme Court and by that court judgments of this Court and the Court of Appeals were reversed and the case remanded to this Court,

"with directions to overrule the motion to dismiss, to afford the defendants an opportunity to answer the bill, to grant an order restraining them from in any wise offering, listing or disposing of any of the lands in question pending the final decree, and to take such further proceedings as may be appropriate and not inconsistent with this opinion."

When the case reached this Court upon the remanding order of the Supreme Court, the defendants again filed a motion to dismiss the bill, which motion was accompanied by certain exhibits and affidavits in support thereof. At the same time they filed their answer, also accompanied by an exhibit, to the bill, which answer they make subject to the ruling of the Court on their motion to dismiss. This motion was argued and submitted, but a decision thereon was postponed by the Court until the final hearing of the cause.

150 The questions of fact raised by the motion were the subject of considerable evidence, pro and con, adduced at the final hearing, and claimed applicable rules thereto invoked and argued, and separate briefs dealing with this phase of the case were submitted.

It is clear, in the opinion of the Court, that the grounds of the motion and the opposition thereto, were sufficient developed in the trial of the case on the merits, to admit of a determination of the questions raised thereby, in the conclusions which the Court has reached on the whole case as presented by the pleadings and evidence, and which are the basis of its decision, and that therefore the motion to dismiss should be overruled.

The bill alleges that the plaintiff is and from time immemorial has been, a town known by the common name of Pueblo of Santa Rosa, and that it is composed of civilized, sedentary, agricultural and pastoral inhabitants, who are, and from time immemorial have been, Pueblo Indians, known as such, and living in permanent houses in a village of fixed and permanent location, built upon the lands hereinafter described, which are said to be situated within the present County of Pima, in the State of Arizona, which lands have been granted and conceded to said Pueblo "by the laws and customs of the Indians antedating the Spanish discovery of America, and also by the laws of Spain and Mexico", these lands being within the territory ceded to the United by the Gadsden treaty.

It is further alleged that the inhabitants of said Pueblo have lived, and continue to live, in *communal life in said Pueblo*; that they govern, and from time immemorial have governed, themselves and their community, in accordance with definite laws, and
 151 customs having the force of law, which have always been obeyed by the inhabitants; that at regular intervals they

assemble in common council, composed of the adult male inhabitants of the Pueblo, and that such councils have legislated on matters concerning the Pueblo and its inhabitants by rules and decisions having the force of law.

It is alleged that these people have always maintained a high degree of civilization as compared with the wild or savage Indian tribes, and have always been peaceable and have never made war on white settlers or resisted established government.

It is further alleged that the inhabitants of said Pueblo were at the time of the Gadsden treaty, citizens of Mexico, with large civil and political rights, and that they are now citizens of the United States and of the State of Arizona. The bill further alleges that the said

"laws and customs of the Indians and also the laws of Spain and of Mexico at all times conceded to the plaintiff, and the plaintiff claims and exercises, and from time immemorial has claimed and exercised"

all of those rights and privileges that are usually vested in a municipal form of government when established by law, and by reason of these facts the plaintiff claims that it is, and from time immemorial has been, under the laws of Spain and Mexico and of the United States "an entity in fact and in law a juridical person entitled to sue as such"; and it brings this suit in law in its own right.

The answer of the respondents specifically denies that the plaintiff is now or ever has had any existence as a pueblo of the character claimed by the plaintiff, and that neither the Indian inhabitants of the scattered villages in the Santa Rosa valley in Pima County, Arizona, nor said villages or communities therein, nor any one thereof, has any corporate or quasi-corporate existence. It alleges that none of said villages or communities have ever authorized the institution or maintenance of this suit by the attorneys of record nor have they ratified or approved the same; that neither said villages nor the individual Indians therein had any knowledge whatsoever of the institution or pendency of the suit until long after the same had been brought and not until they were informed thereof by representatives of the Indian Bureau, and that its institution and maintenance were, and are, wholly unauthorized by said villages or any of them or by the Indians inhabiting the region in question.

The answer further alleges that the Papago Indians who live in the Santa Rosa valley never had a common name of "Pueblo of Santa Rosa", or any other common name to designate them as a definite organization or commercial entity, or as a pueblo, as that term is used to denote a community with definite organization or with certain political, civic or property rights.

The answer further denies both specifically and generally that the alleged plaintiff owned, possessed or occupied the land described in the bill of complaint, and allege that the description of said land is taken from a pretended deed purported to be executed by one Luis, a copy of which is annexed to and made a part of the answer.

It further alleges that said deed is one of sixteen, each dated in December 1880, and these deeds purport to convey to one Robert F.

Hunter, a half interest in more than 2,600,000 acres of land
153 (4,071 square miles) in Pima and Pinal Counties, Arizona.

The answer further alleges that said Hunter by agreements with one Robert M. Martin of Los Angeles, California, dated March 17th and May 17, 1911, purported to sell to said Martin three-fourths of the one-half interest in said lands claimed by said Hunter to be vested in him,

"the said Martin binding himself to take steps for securing a partition of the said land, *all proceedings to be instituted in the name of the Indian inhabitants of the respective villages named in the deeds.*"

There is both a general and specific denial that any of the said villages in the Santa Rosa valley or the Indian inhabitants thereof ever had or claimed to have had any title to any tract or parcel of land therein, and the answer avers that said Indians have claimed and exercised over said lands merely the ordinary Indian right of occupancy or possession.

There are other averments in the answer not necessary for present purposes to be touched upon. It will suffice to say that there is distinctly put in issue by the answer the claims set up in the bill of complaint, and as well a total want of authority by the attorneys of record to institute and maintain the suit on behalf of any pueblo, town or village or of the Indian inhabitants thereof.

The grounds of the motion to dismiss are mainly based upon the alleged want of authority on the part of the attorneys of record for the plaintiff to have instituted and to have maintained the suit, but except as hereinafter referred to it is not necessary at this point to particularize or repeat the grounds of the motion.

It is to be observed that, according to the bill of complaint, the
154 plaintiff claims the relief it seeks in the character of a "town known by the common name of Pueblo of Santa Rosa", and that the lands to which it asserts ownership in the bill, are so owned, and held by it, "to be used for the common benefit of the town and its inhabitants".

The bill is signed "The Pueblo of Santa Rosa by Henry P. Blair, Attorney of Record. The bill also bears the signatures of "Rounds, Hatch, Dillingham & Debevoise, Cates & Robinson, Henry P. Blair, Attorneys for Plaintiff." It is sworn to by Mr. Blair before a Notary Public in the District of Columbia, and his jurat is in the following language:

"Henry P. Blair, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff herein; that he has read the foregoing amended bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason that this complaint is verified by him and not by the plaintiff is that the

plaintiff is absent from the District of Columbia; that the sources of his information and the grounds of his belief are statements made and information given to him by associate counsel familiar with the facts."

From the evidence it is established that on January 3, 1919 the Solicitor General of the United States wrote to Messrs Rounds, Hatch, Dillingham and Debevoise, of counsel signing the bill, asking them to inform him by what authority this suit was instituted and maintained. Their reply, under date of January 9, 1919 was as follows:

"Answering your letter of the third inst. regarding the case of Franklin Knight Lane, Secretary of the Interior, and Clay Thalman, Commissioner of the General Land Office against the Pueblo of Santa Rosa now pending in the Supreme Court in which you ask us to inform you by what authority the suit was instituted and maintained, we have to advise you that our authority was conferred by the power of attorney and substitution under such power of attorney, copies of which we are enclosing herewith.

155 We beg to state further that we are advised that the inhabitants of Santa Rosa are cognizant of the fact that the suit is pending and are in sympathy with the result sought to be obtained."

The power of attorney and substitution referred to in the above letter are also in evidence, and will be referred to hereafter.

It is also established by the evidence that under date of December 8, 1880, a person describing himself as "Luis, Captain of the Village or pueblo of Santa Rosa, in the Territory of Arizona", undertook "for himself and the inhabitants of said Village and the villages of Aitij, Semillaquimade and Chaquiwa", to convey to one Robert F. Hunter, the *undivided half* of lands, alleged in the conveyance to be owned by said villages of Santa Rosa, and which are described therein as follows:

"Commencing at a point known as Kabitque, (Papago language) Mountain Logia Plain—thence running south to Omoka—a distance of Twenty four (24) miles—thence from Okoma running west to Mescalero, a distance of twenty four (24) miles—thence from Mescalero running north to Sierra Cabeza, a distance of Thirty (30) miles, thence East to the point of beginning Kabitque, a distance of thirty (30) miles—and containing Seven Hundred and Twenty (720) Square Miles, more or less. And being the lands owned by said Village at the date of the cession of the Territory of Arizona to the United States."

Excepted from the lands thus described, however, are "the fields under cultivation at the date hereof". By the foregoing quoted description, the bill describes the land, which is the subject of this suit, except that there is omitted all reference to the "fields under cultivation", which are excluded from the operation of the conveyance.

The interest in the lands, thus undertaken to be conveyed, is conveyed to Hunter

156 "in trust, his heirs and assigns, forever; and to give legal force and effect to an agreement in writing made and entered into by and between said — and — at — on the — day of —, A. D. 188-."

This conveyance was not recorded until nearly 33 years and six months after its execution; to be exact on June 2, 1914. And the recordation occurred some two years and three months after the death of the grantee Hunter.

Under the same date as that of the above-mentioned conveyance, there was executed by the same Luis, in the same character, a power of attorney by which he undertook to appoint Hunter

"our true and lawful attorney, to represent and prosecute in our names, or the names of the said inhabitants of said village before the Government of the United States any of the branches thereof, whether Executive, Legislative, or Judicial, and any of its departments or wherever necessary, and any and all matters of difference, contest or dispute that may attend or arise in the course of settlement, adjustment, determination, compromise or recognition of our title, claims and demands, whether at Law or Equity, and of whatsoever nature, to and for certain grants of tracts of land situate in the said territory the title to which is vested in us or said inhabitants; and which said grants or tracts of land may in whole or in part have been held, claimed, granted, conveyed, or otherwise disposed of by the United States, as a part of the public domain, or have been so treated or regarded by any other persons or parties whomsoever. Giving and granting to our said Attorney full power and authority to take such action in the premises aforesaid as he may deem necessary, in order to recover from the United States, or its grantees, or any other persons or parties whomsoever, possession of any and all of said lands, that may have been conveyed by the United States, by patent or otherwise, or that may be held, claimed or possessed by the United States, or by other persons or parties, in any manner whatsoever."

The power further provides

"Hereby granting to our said Attorney, full powers of delegation, substitution and revocation. And as this Power of Attorney is accompanied with an interest vesting in our said Attorney, for a valuable consideration, it is hereby made irrevocable."

157 Under date of March 17, 1911, the aforesaid Robert F. Hunter, describing himself as Trustee and of the District of Columbia, entered into a written agreement with one R. M. Martin of Los Angeles, California, in which it is recited that the said parties are desirous of entering into an agreement, a copy of which is attached, and it is stipulated that upon the demand of Martin at any time on or before May 17, 1911, Hunter will execute the agree-

ment attached to the contract now being considered, in consideration of the payment by Martin to Hunter of \$100.00 upon execution of the contract of March 17th, and that he will pay a further like sum to Hunter on April 17, 1911. Martin also agreed to deliver in escrow to one C. B. Guittard a certificate of certain shares of stock, to be held as security for the execution by Martin of the proposed agreement of May 17, 1911, on or before that date. This agreement of March 17, 1911, was signed by Hunter and Martin on the day of its date and was acknowledged by *Martin* before a Notary Public on June 10, 1914. The proposed agreement of May 17, 1911, was signed, sealed and acknowledged before a Notary Public, by both Hunter and Martin, on the day of its date, and both of these agreements appear to have been recorded among the land records of the County of Pima, State of Arizona, on June 13, 1914, and in the County of Maricopa, in the same State, on June 22, 1914, and apparently again recorded in Pima County on July 7, 1914. The recordations in Pima County, according to the certificate of the Recorder, were at the request of Wells, Fargo & Company.

The agreement of May 17, 1911, referred to above, among other things, recites that Martin desires to acquire from Hunter three-fourths of the undivided half interest, "vesting in said" 158 Hunter, to ten tracts of land situated in Arizona and vesting in said Hunter by, under and through ten deeds of conveyance executed and made to Hunter

"by the Capitans or Chiefs of the Villages of San Xavier, Santa Rosa, Cacez, Coyote, Anaca, Qui-tacea, Quajate, Bajio, Tecolote and Tesote, the remaining undivided half interest vesting in the Indian inhabitants of said villages:"

The parties then proceed to covenant and stipulate that

"it being desirous to have said tracts in their entirety segregated from the public domain of the United States, and a partition thereof made and effected between the parties thereto and hereto of their respective interest."

Martin obligates himself to pay Hunter the sum of \$1,000.00 on the signing of the agreement and the sum of \$100.00 per month thereafter until the segregation and partitions shall have been effected, and Martin further obligates himself to take active and energetic steps for securing said segregation and partitions, at his sole cost, charge and expenditure and without cost, charge or expense to the Indian inhabitants of said villages or any of them or to said Hunter.

It is further stipulated that the total monthly payments referred to, should not exceed the sum of \$6,000.00. It is further stipulated and agreed that if Martin was successful in his undertaking the monthly payments were to continue

"until the date of final partition of the respective interests herein vested, or until the payment by said party of the second part to the party of the first part of said sum of two hundred fifty thousand

(\$250,000.00) dollars at the time and in the manner hereinafter provided."

It is further stipulated and agreed

"that after such segregation from the public domain of the United States and partition of rights and interests as tenants-in common that the said Robert F. Hunter trustee, hereby grants an option to purchase the one-fourth of his undivided half interest then remaining vested in him to the said R. M. Martin, for the sum of two hundred fifty thousand (\$250,000.00) dollars said purchase money to be paid on or before sixty (60) days from the date of the partition of said undivided half interest from the undivided half interest of the respective Indian Villages; in default of such payment of two hundred fifty thousand dollars (\$250,000.00) at the time and in the manner above set forth, the option to purchase hereby granted shall be null and void and of no force or effect whatsoever at law or in equity.

All proceedings for the segregation of said respective tracts of land from the public domain of the United States are to be instituted and conducted in the name of the Indian inhabitants of the said respective villages or pueblos under and by virtue of the sever (several?) empowerments to Robert F. Hunter, as evidenced by the general powers of attorney made and executed to him, and certified copies of which said powers of attorney are herein and hereby referred to as a part of this agreement, and said Robert F. Hunter, hereby agrees on demand of the party of the second part hereto to delegate to the co-nseel (counsel?) of the party of the second part power and authority under the provisions of the general powers of attorney, made and executed to him for the Indian inhabitants of said villages, respectively."

It is also established by the evidence that under date of May 31, 1911, Hunter, claiming to act by virtue of the power and authority given to him by the power of attorney from Luis, heretofore set forth, undertook to substitute and appoint Alton M. Cates of Ventura County, California

"to do, perform and execute every act and thing which I might or could do as the attorney in fact and substitute of the said persons hereinabove named and described, hereby ratifying and confirming all that the said attorney and substitute herein made and appointed, shall do in the premises by virtue hereof, and of the said letters or powers of attorney and each thereof."

Hunter died on the 19th day of February, 1912 and Cates, whom Hunter undertook to substitute as attorney in fact, died on November 23, 1920. There is also evidence tending to show that Luis, the grantor in the deed to Hunter of December 8, 1880, and constituent of the power of attorney of the same date, himself died about the year 1890.

160 It is to be observed that the power of attorney from Luis to Hunter avers that it "is accompanied with an interest vesting in our said Attorney, for a valuable consideration", and thereupon it is attempted to be made irrevocable. The Court is of the opinion that it is established by the evidence, and it so finds, that the interest thus alleged to be vested in Hunter is the interest represented by the conveyance of December 8th of an undivided half interest of the lands in suit.

It is also to be observed that Cates, whom Hunter undertook to substitute in his own place and stead as attorney in fact under this power of attorney, is dead, he having died after the institution of the present suit, but before it came on for final hearing.

From the foregoing resumé of facts, that the Court finds are established in this case, it appears that the plaintiff, claiming to be a town exercising the rights and privileges that are usually vested "in a municipal form of government", and as such owning and holding the land in suit "to be used for the common benefit of the town and its inhabitants", undertakes to convey an undivided half interest in such lands, and this after, according to its claim, it had existed as such a town and municipality and as the owner and holder of the lands, for more than three centuries, during which time it claims that these lands have constituted the place of abode of its Indian inhabitants. Conveying this interest to an individual, who in turn undertakes to sell three-fourths of the undivided interest so conveyed, to Martin, contracting with him that he, Martin, should bring about a partition of said lands between the Indian inhabitants thereof and the Hunter interests.

161 It is noted that throughout the contract of May 17, 1911 between Hunter and Martin, that Martin is to undertake, among other things, to have the land in suit *segregated from the public domain of the United States*, apparently a recognition that the lands were within the public domain of the United States, although the bill in this case proceeds upon the claim that these lands are not and never were a part of the public domain.

Assuming, *but without deciding*, that the plaintiff was and is the kind of pueblo claimed in the Bill of Complaint and owned the 720 square miles of land described therein, it is clearly made to appear that the authority to institute and maintain this suit, rests upon the power of attorney and substitution heretofore set out, and the latter follows, in point of time, the agreements between Hunter and Martin of March 17th and May 17, 1911. The substitution under the power of attorney of December 8, 1880, was undertaken to be made nearly 31½ years later and on May 31, 1911. The power of attorney is inseparable from the deed to Hunter of the same date. Hunter is the grantee in the one, the attorney in fact in the other. Hunter's agreements with Martin, already mentioned, constitute contracts for the sale by Hunter to Martin of ¾ of an undivided half of the lands in suit, and Martin contracts among other things to *bring about a partition of said lands between the Indians and the Hunter's interests*. It is clearly shown that Martin is the Client of the attorneys of record of the plaintiff.

It must be observed that the deed to Hunter is a deed in trust, though the trusts themselves are not revealed, and that Hunter was created thereby a trustee of concealed or secret trusts.

162 It is clear that before partition of the lands could be effectively accomplished between the Indians and the Hunter interests, the hands of the defendants upon the lands in question must first be removed and they and their successors in office perpetually restrained and enjoined from interfering thereafter with the same, and there can be no reasonable doubt that this suit was and is intended to clear the way for such partition.

This being so, the clearest proof of authority from the Indians to institute and maintain the suit, nearly a generation after the execution of the deed and powers of attorney of December 8, 1880, should be required. And especially is this so, when, according to the contentions made on behalf of the plaintiff, a town, undertakes to divest itself of an undivided one half interest in some 720 square miles of land held by it exclusively for "the common benefit of the town and its inhabitants."

Such proof has not been made, in the opinion of the Court. Indeed on the whole evidence, gravest doubt exists in the Court's mind as to any authority ever having been conferred by the plaintiff to bring or maintain a suit of any kind in its behalf.

It has been pointed out that Mr. Blair, one of the attorneys of record for the plaintiff, and who made the jurat to the bill, did so on the strength of "statements made and information given to him by associate counsel familiar with the facts", and while he does not specify which of the associate counsel made the statements to him or furnished the information, upon which he relied, it would not be an unjustifiable assumption to conclude, that they emanated from

163 associate counsel, Messrs. Rounds, Hatch, Dillingham & Debevoise. However this may be it was this firm which assumed the responsibility for the statements contained in their letter to the Solicitor General, already quoted. Of their perfect good faith and of the correctness of their statement therein as to the source of their authority, the Court entertains no doubt. But from the evidence in this case it is established, in the Court's opinion, that they had not been correctly informed as to the knowledge of or sympathy with the pending suit by the inhabitants of Santa Rosa, as this is stated in the last paragraph of their letter to the Solicitor General.

By the clear weight of evidence on this point, it is apparent that there was practically no knowledge at all of the institution of this suit by the Papago Indian inhabitants of the region in question, until long after it had been instituted, and no evidence that they ratified the act.

In view of the foregoing the Court has reached the following conclusions;

1. That it is established by the evidence that there was no authority from the plaintiff Pueblo or its Indian inhabitants to institute or maintain this suit.

2. That, assuming *but without deciding*, the plaintiff is a pueblo, town or municipal body, as it claims to be, and assuming *but without deciding*, that it owned and held the lands in suit exclusively for its common benefit and that of its Indian inhabitants living thereon in community life, the land constituting communal property for this purpose, it did not possess under any law, Spanish, Mexican or

164 United States, or by any custom, usage or tradition, the power to either make a conveyance such as the man Luis undertook to make to Hunter, or to clothe Hunter with power to bring any kind of a suit or action in its name or in the name of its Indian inhabitants, or both, having the ultimate object of effecting a partition of the lands between the plaintiff Pueblo or its Indian inhabitants of the one part, and of Hunter or his heirs or assignees on the other.

The foregoing conclusions require that a decree should be entered dismissing the bill, and such a decree will be signed after settlement upon notice.

F. L. SIDDONSON,

Justice.

May 22nd, 1924.

Decree Dismissing Bill.

Filed October 3, 1924.

* * * * *

This cause came on to be heard on final hearing, at this term, upon the pleadings, evidence and exhibits, and also upon the motion of the defendants, accompanied by exhibits and affidavits, filed herein June 9, 1919, to dismiss the bill of complaint; was argued and submitted by counsel for the respective parties and taken under advisement by the court, and the court being fully advised in the premises, it is by the Court this 3rd day of October 1924, adjudged, ordered and decreed as follows:

1. That the aforesaid motion to dismiss the bill of complaint be, and the same is hereby overruled.

2. That the said bill of complaint be, and the same hereby
165 is finally dismissed, upon the merits, with costs in favor of the defendants, to be taxed by the Clerk, for which the defendants shall have execution the same as at law.

F. L. SIDDONSON,

Justice.

From the foregoing decree, the plaintiff notes an appeal in open Court to the Court of Appeals of the District of Columbia, this 3rd day of October 1924, and on motion of the plaintiff the maximum amount of the bond in the form of an undertaking, under seal, as required by law, for costs on appeal, be, and the same is hereby fixed in the sum of One Hundred Dollars (\$100.00), or in lieu thereof the plaintiff may deposit with the Clerk of this Court the sum of Fifty Dollars (\$50.00) in cash.

F. L. SIDDONSON,

Justice.

Memorandum.

October 20, 1924.—\$50 deposited with Clerk of Court in lieu of undertaking for costs on appeal.

Assignment of Errors.

Filed October 20, 1924.

* * * * *

The Supreme Court of the District of Columbia, holding an equity court, erred in the following particulars:

1. The court erred in holding and deciding

"That it is established by the evidence that there was no authority from the plaintiff Pueblo or its Indian inhabitants to institute or maintain this suit."

166 2. The court erred in not holding and deciding that it is established by the evidence that the plaintiff Pueblo or its Indian inhabitants duly authorized the institution and prosecution of this suit to its final termination.

3. The court erred in not holding and deciding that defendants failed to sustain the burden of proof in support of their claim that the plaintiff or its Indian inhabitants did not authorize the institution and prosecution of this suit.

4. The court erred in holding and deciding:

"That, assuming *but without deciding*, the plaintiff is a pueblo, town or municipal body, as it claims to be, and assuming *but without deciding*, that it owned and held the lands in suit exclusively for its common benefit and that of its Indian inhabitants living thereon in community life, the lands constituting communal property for this purpose, it did not possess under any law, Spanish, Mexican or United States, or by any custom, usage or tradition, the power to either make a conveyance such as the man Luis undertook to make to Hunter, or to clothe Hunter with power to bring any kind of a suit or action in its name or in the name of its Indian inhabitants, or both, having the ultimate object of effecting a partition of the lands between the plaintiff Pueblo or its Indian inhabitants of the one part, and of Hunter or his heirs or assignees on the other."

5. The court erred in holding and deciding that, even conceding the plaintiff is a pueblo, town or municipal body, and owned and held the lands in suit exclusively for its common benefit and that of its Indian inhabitants living thereon in communal life, the lands constitute community property for this purpose, the plaintiff did not possess under any law, Spanish Mexican or United States, or by any custom, usage or tradition, the power to clothe Hunter, a lawyer, with the power to bring any kind of a suit or action
167 in its, the plaintiff's name, or in the name of its Indian inhabitants, or both, if the ultimate object of such suit was

to effect a partition of the lands between the plaintiff Pueblo or of its Indian inhabitants of the one part and of Hunter or his heirs or assigns on the other.

6. The court erred in holding and deciding that (1) the ultimate object of the plaintiff was to effect a partition of the lands in suit between the plaintiff Pueblo or its Indian inhabitants of the one part, and of Hunter or his heirs or assignees on the other, and the court further erred in holding (2) that by reason thereof, the plaintiff did not have the power to institute and maintain this suit.

7. The court erred in not holding that the ultimate object, if any, of the plaintiff of effecting a partition of the lands in suit was immaterial as affecting the right of the plaintiff to have a decree adjudging that plaintiff is entitled to the equitable injunctive relief as prayed in plaintiff's bill of complaint.

8. The court erred in holding that

"throughout the contract of May 17, 1911, between Hunter and Martin, that Martin is to undertake, among other things, to have the land in suit segregated from the public domain of the United States, apparently a recognition that the lands were within the public domain of the United States, although the bill in this case proceeds upon the claim that these lands are not and never were a part of the public domain."

9. The court erred in holding that the terms and provisions of the contract between Hunter and Martin, to which the plaintiff was not a party, bound the plaintiff, or that such contract did or could affect the plaintiff's right to the injunctive relief prayed in its bill of complaint.

10. The court erred in dismissing the bill of complaint, and
168 denying the relief sought thereby, because of the finding by the court that

"it is clear that before partition of the lands could be effectively accomplished between the Indians and the Hunter interests, the hands of the defendants upon the lands in question must first be removed and they and their successors in office perpetually restrained and enjoined from interfering thereafter with the same, and there can be no reasonable doubt that this suit was and is intended to clear the way for such partition."

11. The court erred in holding and deciding:

"It is clearly shown that Martin is the client of the attorneys of record of the plaintiff."

12. The court erred in not holding and deciding that the plaintiff is the client of the attorneys of record of the plaintiff.

13. The court erred in holding and deciding that the plaintiff did not authorize the institution and prosecution of this suit.

14. The court erred in not granting the relief prayed in the bill of complaint because in the opinion of the trial court the plaintiff in-

tends to partition the lands in suit in the event the plaintiff shall obtain the injunctive relief prayed in the bill.

15. The court erred in holding and deciding that the plaintiff was not entitled to a decree awarding to the plaintiff the injunctive relief as prayed in plaintiff's bill of complaint, even if the ultimate object of the plaintiff was to effect a partition of the lands in suit between the plaintiff or of its Indian inhabitants of the one part and of Hunter or his heirs or assigns on the other.

16. The court erred in holding and deciding that the plaintiff did not possess under any law, Spanish, Mexican or United States, or by any custom, usage or tradition, the power to clothe Hunter, a lawyer, with power to bring any kind of a suit or action in its, the plaintiff's name or in the name of its Indian inhabitants, or both, if the ultimate object of such suit was to effect a partition of the lands in suit between the plaintiff or its Indian inhabitants of the one part and of Hunter or his heirs or assigns on the other.

17. The court erred in holding and deciding by reason of the ultimate object of the plaintiff to effect a partition of the lands in suit, that that disentitles the plaintiff to the injunctive relief prayed in plaintiff's bill of complaint brought for the protection of plaintiff's interests in the lands in suit.

18. The court erred in holding and deciding that proof of authority from the plaintiff to institute and maintain this suit has not been made; and the court further erred in holding that the gravest doubt exists as to any authority ever having been conferred by the plaintiff to bring or maintain a suit of any kind in its behalf.

19. The court erred in admitting in evidence two certified copies of alleged contracts between Robert F. Hunter and R. M. Martin, dated, respectively, March 17, 1911, and May 17, 1911, over objections and exceptions by plaintiff.

20. The court erred in holding and deciding that any provision in the contract between Hunter and Martin, dated May 17, 1911, was "apparently a recognition that the lands in suit were within the public domain of the United States," and further erred in holding that such construction of said contract was binding upon the plaintiff in this suit.

21. The court erred in holding and deciding that the proper construction of the contract between Hunter and Martin, dated May 17, 1911, is "to have the land in suit segregated from the public domain of the United States." * * * "apparently a recognition that the lands were within the public domain of the United States," is in such conflict with the allegations of the bill of complaint as binds the plaintiff and disentitles the plaintiff to the injunctive relief prayed in its bill of complaint.

22. The court erred in not holding and deciding that upon all of the evidence in this case the plaintiff had fully proven the essential allegations of its Bill of Complaint and was entitled to the relief as prayed in its said Bill.

23. The court erred in holding and deciding in effect that under the Gadsden Treaty and the Treaty of Guadalupe Hidalgo the plain-

tiff did not have the power to clothe Hunter, a lawyer, with power to institute and maintain this suit in the plaintiff's name for a decree for the injunctive relief prayed in the Bill to protect the plaintiff's rights and interests in the lands in suit.

24. The court erred in not holding that the plaintiff was a Pueblo, a legal entity, with capacity to maintain its Bill of Complaint in this suit to protect the plaintiff's rights and interests in the lands in suit, guaranteed to the plaintiff by the provisions of the Gadsden Treaty (10 Stat. at L. 1031) and the Treaty of Guadalupe Hidalgo (—) between the United States and the Republic of Mexico.

25. The court erred in not holding and deciding that upon the evidence the plaintiff had proven that the fee title to the lands in suit was in the plaintiff.

26. The court erred in not holding and deciding that the monuments and boundaries to the tracts of lands described in the bill of complaint was fully proven by the evidence with sufficient certainty to identify said lands to enable or authorize the court to enter its decree in favor of the plaintiff as owner of said tracts of lands and to award plaintiff the injunctive relief prayed in the bill.

27. The court erred in not holding and deciding that by the plaintiff's evidence it is sufficiently proven that the plaintiff is the owner in fee and is in possession of the lands in suit.

28. The court erred in neglecting and failing to follow the decisions of the Supreme Court of the United States in *Lane vs. Pueblo of Santa Rosa*, reported in 249 U. S. 110, and in *Pueblo of Santa Rosa vs. Lane*, reported in 46 App. Cas. D. C. 411.

29. The court erred in entering a decree dismissing plaintiff's bill of complaint, upon the whole record.

30. The court erred in entering the decree dismissing plaintiff's bill of complaint, thereby depriving plaintiff of its property and its property rights without due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

31. The court erred in holding and deciding that the private lands of the plaintiff, as described in the Bill of Complaint, were within the public domain, which said holding and decision take plaintiff's said lands for public use, without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

32. That in and by the dismissal of the Bill of Complaint, the plaintiff is deprived of its property and property rights as guaranteed by the Fifth Amendment to the Constitution of the United States, which provides that no one shall be deprived of property without due process of law, or private property cannot be taken for public use, without just compensation.

33. The court, in dismissing plaintiff's Bill of Complaint, erred in failing and refusing to grant to the plaintiff its equitable rights acquired under the Gadsden Treaty (10 Statute at Large 1031) and laws enacted by Congress of the United States in connection therewith, which said ruling of the court was and is violation of Clause 2 of Article VI of the Constitution of the United States.

34. The court erred in refusing and declining to grant to plaintiff the relief prayed in its Bill of Complaint, the right to such relief having been acquired by the plaintiff under the Gadsden Treaty (10 Statute at Large 1031) and laws enacted by Congress of the United States in connection therewith, said ruling of the court being in violation of Clause 2 of Article VI of the Constitution of the United States.

35. The court erred in entering its order dated April 15, 1921, postponing until final hearing of this cause the motion of defendants filed June 9, 1919, to dismiss the Bill of Complaint on the ground of lack of authority of plaintiff's counsel to prosecute this suit.

36. The court erred in not holding that the defendants' motion dated June 9, 1919, to dismiss the Bill of Complaint filed January 28, 1915, was filed too late to be entertained or considered by the court.

173 37. The court erred in not holding that the answer of defendants on the merits, filed June 9, 1919, was a waiver of any claim of the defendants that counsel for plaintiff lacked authority to prosecute this suit in behalf of the plaintiff.

38. The court erred in holding that at the final hearing of this cause on the merits the alleged lack of authority of counsel for the plaintiff could be entertained or considered.

39. The court erred in not holding that the failure of the defendants to promptly file a plea in abatement, or similar pleading, after the Bill of Complaint was filed, setting forth its claim of lack of authority of counsel for plaintiff to prosecute this suit, constituted a waiver or acquiescence by defendants of the authority of plaintiff's counsel to appear herein and prosecute this suit for the plaintiff.

40. The court erred in not holding that the objection, if any, of defendants that plaintiff's counsel lacked authority to appear herein and prosecute this suit for plaintiff, should have been made by defendants promptly after the filing of the Bill of Complaint.

41. The court erred in not holding that the filing on February 20, 1915, by the defendants of its original motion to dismiss, in the nature of a demurrer, the Bill of Complaint, on grounds other than lack of authority of counsel of plaintiff to appear herein and prosecute this suit for plaintiff, precluded the defendants from raising for the first time on June 9, 1919, of such alleged lack of authority of plaintiff's counsel herein.

174 42. The court erred in not holding that the final hearing of this cause on the merits, without direct notice to or service upon the plaintiff itself, was a waiver of the defendants' claim that plaintiff's counsel lacked authority to appear herein and prosecute this suit for plaintiff.

43. The court erred in sustaining defendants' objection to the questions asked of the witness W. T. Day, and the answers of said witness, hereinafter set forth, as to his conversation with the Chief of Santa Rosa, relative to the existence of this suit (Record, typewritten page 48):

"Q. What did he say relative to it, if anything?"

Mr. Fraser: "Objected to as hearsay."

"A. I asked him some questions, and he didn't want to say anything, and I asked him why he didn't want to say anything, and he said 'Because Hugh Norris had told him not to talk or say anything.'"

"Q. Who was Hugh Norris?" "A. He was Chief of Police of the Indians."

"Q. So you were not able to get into conversation with him about this matter?" "A. No, we could get nothing out of him at all."

Mr. Fraser: "Objected to and ask that the two previous questions and answers be stricken as incompetent, immaterial and irrelevant."

"Q. What was the attitude of this man with whom you attempted to talk as seeming to be afraid to talk or not desiring to talk?"

To the last question defendant objected; ground, incompetent, irrelevant and immaterial; sustained; exception noted. The deposition of witness shows that he answers as follows: "He just simply refused to talk. He was working out in the field and we waited until he got through and he wanted to know what we wanted, and we told him and talked to him about this case and tried to explain it, and he said, 'What do you want to talk about?' and we told him, and he said he could not say anything about it as he had been instructed by Hugh Norris not to talk to any one about it."

44. The court erred in overruling plaintiff's objection to the question asked, on cross-examination of the witness W. T. Day, which elicited the following testimony (Record, typewritten page 55):

"Mr. Guittard frequently visited my store known as Day's Store at Quijotoa and brought people with him to interest in the Papago land proposition, I suppose."

45. The court erred in sustaining defendants' objection to the question asked of the witness W. T. Day, which elicited that part of his answer as follows (Record, typewritten page 59):

"In the early days the Mexican people transacted their business in very much the same way as the Indians."

46. The court erred in sustaining defendants' objection to the introduction by plaintiff of the map of Herbert Eugene Bolton, entitled "Map of Pimeria Alta, 1687-1711" (Record, typewritten page 126).

47. The court erred in not granting plaintiff's motion to strike out all matter relative to Mr. Hunter's contract with Mr. Martin with reference to the sale of the units by Mr. Martin. (Record, typewritten page 181.)

48. The court erred in overruling plaintiff's objection to the evidence by the defendants' witness W. L. Bowie concerning fifteen

tracts of land other than the tract involved in this case.
176 (Record, typewritten pages 188-189).

49. The court erred in overruling the plaintiff's objection to the question asked by defendants of the witness W. L. Bowie, as hereinafter set forth (Record, typewritten page 192). The witness W. L. Bowie:

"In the course of my investigation I interviewed Robert M. Martin on two occasions about the present suit.

Q. Did you inquire who it was that employed the attorneys representing the so-called plaintiff?

A. Yes, that came out during the course of our conversation.

Q. Who did he say employed them?

To which question the plaintiff objected on the ground that it was irrelevant and immaterial. Objection overruled—exception noted.

A. He said that he (Martin) had employed at first an attorney in Seattle, whose name I have forgotten, to give him a report before he purchased the three-fourths interest from Hunter; that following that, he had employed Cates and Robinson of Los Angeles, that firm having been almost exclusively on the case for a year, I believe, he told me, for investigation work, and that he had employed the firm of Rounds, Hatch, Dillingham & Debevoise to represent him in the courts of the District of Columbia and the U. S. Supreme Court, on a retainer; that he, himself, had paid a retainer.

Whereupon the plaintiff moved that the last answer be stricken as hearsay. Motion overruled—exception noted.

50. The court erred in not granting plaintiff's motion, immediately above set forth, to strike out the answer of the witness W. L. Bowie that Martin employed attorneys. (Record, typewritten page 193.)

51. The court erred in overruling plaintiff's objection to the following questions asked by defendants on re-direct of the witness W. L. Bowie. (Record, typewritten pages 198-199.)

"Q. In the conversation with Mr. Martin that you testified to yesterday, did he inform you what he had done, or what course he had taken with regard to the interest he had acquired from Hunter and the Hunter deeds?"

To which question plaintiff objected on the ground irrelevant, immaterial and hearsay; objection overruled; exception noted.

"A. Yes, he did.

Q. What did he tell you?"

To which question plaintiff objected on the grounds that it did not tend to prove any of the issues in the case and is entirely and purely hearsay; objection overruled.

"A. He told me that he considered that he owned a three-fourths interest in the undivided one-half interest which he purchased from

Mr. Hunter in those 10 tracts; that it was an individual ownership. That he had formed a syndicate, taking 1,000 units as a basis; had given 500 units, so to speak, to the Papagos.

52. The court erred in overruling plaintiff's objection to the questions, asked by defendants, on direct examination of the witness, Hugh Norris, which elicited the following answer (Record, typewritten pages 394-5):

"I started out and the first man I saw at the village outside of town was Juan Pablo—I asked him if he knew anything about this land sale or agreement to give half of the Papago land to Col. Hunter—he said he never had heard about it. I went to Quijotos and saw Jose Luis—he was the old chief of that village. He said he did not know anything about it.

(To the question which elicited the answer contained in the last sentence the plaintiff objected; ground, hearsay; objection overruled and exception noted.)

178 (Witness then describes similar interviews with the chief or acting chief of little Tucson, Tlupowa, Covered Wells and San Xavier, and a very old man at Comobobi, all of whom denied any knowledge of said land sale or agreement with Col. Hunter. Copies of each of the instruments testified to by these witnesses, offered in evidence as defendants' exhibit 5a. Objected to by plaintiff as incompetent, irrelevant, immaterial, and hearsay.)

53. The court erred in overruling plaintiff's objection to the question asked by defendants of their witness Frank A. Thackery, and in overruling plaintiff's motion to strike, hereinafter set forth (Record, typewritten pages 408-409).

Q. Did you take any steps to embody this desire of the present day inhabitants of that vicinity that the suit end and not go on, in written form?

Mr. Kleindienst: We object to this on the grounds that it is hearsay—not the best evidence. Let this objection precede the previous question and we move that the answer be stricken.

(Objection and motion overruled; exception noted.)

A. Yes, sir.

Q. Please state just what you did.

A. I had a petition prepared covering the matters stated, including a request for dismissal, and after having it carefully interpreted and explained to these people, they signed it.

Q. State whether any threat, or promise or pressure of any sort was offered or brought to bear upon them or any of them to induce them to sign this petition?

A. No, sir, there was none.

Q. Was the petition itself interpreted in the hearing of these Indians?

A. I don't understand Papago but it was given to the interpreter in each case and I know from his mentioning various words in Eng-

lish through the petition, that he had read it to all of them who signed. It took a considerable length of time in each case, both preceding and following the reading of the petition. There was in almost every case quite an extended discussion and talk regarding it before they signed. (Petition produced.) The petition contained 181 or 182 signatures. The census of Achi, Akchin, Anegam and Kiacheemuck, which last-named village is marked on the census as Santa Rosa, shows a population of 195 males, over 21 years old. The petition contains a few women. I started out to let the adult women sign the petition also and afterwards, to avoid making such a cumbersome document, I decided just to take the matter up with the adult men. The women, according to Papago custom, take no part in the councils or agreements or such matters. In addition to the Indians to sign at meetings, quite a few signed who were not asked by me. Where my name appears as a witness opposite a signature, all signed in my presence.

54. The court erred in admitting in evidence a petition known as Defendants' Exhibit 6, the signatures to which defendants' witness Frank A. Thackery, special supervisor in the Indian service of the Interior Department, testified he obtained, reciting that the signatories ask the court to dismiss this suit, to which plaintiff objected on the grounds that the document is a self-serving document of the defendants, and is incompetent, immaterial and irrelevant, and it appears to be a document without date and it is not the best evidence of what it purports to show, which objection was overruled and an exception noted (Record, typewritten page 409). Plaintiff also moved to strike the said petition as not competent as testimony or evidence in the case, as not upon any issue properly raised in the case, and upon the further ground that no opportunity has been given counsel for plaintiff to take up this matter with any of the signers or cross-examine them on it; motion denied; exception noted (Record, typewritten pages 412-3).

Defendants' said Exhibit 6a is as follows:

"We, whose names are written below, respectfully say to the Court:

1. We are full blood Papago Indians; we all live in the Santa Rosa Valley on the Papago reservation in Pima County, Arizona; and in one or other of the Santa Rosa group of villages. The name of the village where each of us lives is written after the name of each of us.

2. We have been told that in 1880, the year the railroad came to Tucson, Luis, who was then chief of one or more of this Santa Rosa group of villages gave a paper to a white man called Robert F. Hunter, which seemed to give Hunter the right to bring a suit in the white man's court about the lands lying around these Santa Rosa villages. None of us, old or young, ever heard of this paper until the government men told us about it a few years ago; and none of us ever gave our consent to it.

3. We have also been told that a suit has been brought
 180 by white men and is now going on in the white man's court
 under authority of this paper which Luis gave to Hunter;
 that it is brought in the name of the Pueblo of Santa Rosa against
 some of the government men, and that it has to do with a tract of
 land lying around the Santa Rosa villages. No one of us ever knew
 about this suit until after it was brought. No one of us asked anyone
 to bring it, or gave anyone the right to bring it; no one of us approves
 of this suit or wants it to go on.

4. We respectfully ask the court that this suit which we do not
 want, and with which we have nothing to do, be dismissed."

LOUIS KLEINDIENST,
 LEVI H. DAVID,
Of Counsel for Plaintiff.

Service of the foregoing Assignment of Errors is hereby ac-
 knowledged and copy thereof served on this 20th day of October
 1924.

H. L. UNDERWOOD,
Of Counsel for Defendants.

Memorandum.

October 20, 1924.—Statement of evidence filed.

*Order Setting Forth that Statement of Evidence, in Duplicate, is
 Approved, Settled, and Signed by the Court.*

Filed October 20, 1924.

* * * * *

It appearing to the satisfaction of the court that the Statement of
 Evidence accompanied by the Exhibits, to be included in the tran-
 script of record on appeal to the Court of Appeals, was filed by appel-
 lants on October 20, 1924, and the same is approved by counsel for
 the appellees, and upon consideration of said Statement of Evidence
 together with said Exhibits, it is by the court this 20th day of Oc-
 tober 1924, ordered, that the same be, and it is hereby ap-
 181 proved and settled, and is signed in duplicate, by the court.

F. L. SIDDON,
Justice.

We consent to the passing of the foregoing order:

LOUIS KLEINDIENST,
Of Counsel for Appellant.
 GEORGE A. H. FRASER,
Of Counsel for Appellees.

Order Amending Notation of Appeal.

Filed October 20, 1924.

* * * * *

On motion of the plaintiff, by counsel, it is by the court this 20th day of October, 1924, ordered, that the notation by the plaintiff of the appeal, at the foot of the final decree entered herein on October 3, 1924, from the said decree to the Court of Appeals of the District of Columbia, be, and the same is hereby amended so that such appeal by the plaintiff shall be deemed and considered as having been taken in open court from only so much of said decree which provides for the final dismissal of the plaintiff's bill of complaint with costs in favor of the defendants against the plaintiff (the court being advised by counsel for plaintiff that plaintiff is not appealing from the provisions of paragraph numbered 1 of said decree which overrules the defendants' motion to dismiss plaintiff's bill of complaint); and, on further motion of the plaintiff, the maximum amount of the bond in the form of an undertaking, under seal, as required by law, for costs on said appeal, be, and the same is hereby fixed in the sum of One hundred (\$100) dollars, or the plaintiff may deposit
 182 the sum of Fifty (\$50) dollars in cash with the clerk of this court in lieu of such bond.

F. L. SIDDONSON,

Justice.

No objection.

H. L. UNDERWOOD,

Of counsel for Defendants.

Designation of Record.

Filed October 20, 1924.

* * * * *

The Clerk of the Court will include the following papers in the Transcript of Record on Appeal of this case to the Court of Appeals of the District of Columbia.

1. The bill of complaint.
2. Subpoena to answer and service.
3. Appearance of P. C. West and C. E. Wright as attorneys for defendants.
4. Motion of defendants to dismiss bill, filed February 20, 1915.
5. Opinion of Court, filed April 12, 1916.
6. Decree dismissing bill with costs, entered April 25, 1916, with notation of appeal.
7. Assignment of error, filed June 15, 1916.
8. Memo: Mandate Supreme Court U. S. reversing decree of Court of Appeals.

9. Answer of defendants to bill and Exhibit, filed June 9, 1919.
10. Motion of defendants to dismiss Bill, Exhibit and Affidavits, filed June 9, 1919.
11. Memo: Appearance of C. B. Garnett as attorney for defendants.
- 183 12. Order of Court entered June 19, 1920, substituting John Barton Payne as Secretary of Interior, as defendant, as successor of and in place of defendant Franklin K. Lane, Secretary of Interior, resigned.
13. Affidavits and Exhibit for plaintiff filed June 19, 1920.
14. Opinion of Justice Siddons on motion of defendants to dismiss Bill, filed February 28, 1921.
15. Order of Court dated April 15, 1921, postponing defendants' motion to dismiss Bill until final hearing of cause.
16. Order of Court dated February 24, 1922, substituting as defendants Albert B. Fall, Secretary of Interior and William S. Spry for defendants John Barton Payne and Clay Tallman.
17. Stipulation as to hearing, filed May 26, 1922.
18. Stipulation between counsel dated July 13, 1922, filed July 25, 1922.
19. Opinion of Justice Siddons, filed May 22, 1924.
20. Final Decree, October 3, 1924, and notation of appeal in open court, penalty of bond for costs on appeal fixed or cash deposit of \$50.00 in lieu thereof.
21. Memo: \$50.00 deposited with Clerk of Court in lieu of undertaking, for costs on appeal, and date of deposit.
22. Assignment of errors, filed October 20, 1924.
23. Memo: Statement of Evidence filed by plaintiff.
24. Order of Court setting forth settlement, approval and signing of Statement of Evidence, set forth in Minutes of the Court.
25. Order amending notation of appeal.
26. Orders of court, if any are entered, enlarging time for the doing of any act in regard to this appeal.
- 184 26. This designation.

LOUIS KLEINDIENST,
LEVI H. DAVID,

Of Counsel for Plaintiff.

Service of the foregoing designation is hereby acknowledged and copy hereof served on this 20th day of October 1924.

H. L. UNDERWOOD,
Of Counsel for Defendants.

Order Extending Time for Filing Record.

Filed January 14, 1925.

* * * * *

On consideration of the petition to extend the time for filing the record in this Court until March 5, 1925, in the above entitled cause. It is ordered by the Court that said petition be, and the same is

hereby, granted and the time extended as prayed until and including March 5, 1925.

PER MR. CHIEF JUSTICE MARTIN,
January 13, 1925.

A true copy.

Test:

[SEAL.] HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

185 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 184, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed copy of which is made part of this transcript in cause No. 33201 in Equity, wherein The Pueblo of Santa Rosa is Plaintiff and Franklin Knight Lane, Secretary of the Interior et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington in said District this 19th day of February, 1925.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

EW.

186 In the Supreme Court of the District of Columbia, Holding
an Equity Court.

In Equity.

No. 33,201.

THE PUEBLO OF SANTA ROSA, Plaintiff,

vs.

ALBERT B. FALL, Secretary of the Interior, and WILLIAM SPRY, Com-
missioner of the General Land Office, Defendants.

Statement of the Evidence.

187 Filed Oct. 20, 1924. Morgan H. Beach, Clerk.

In the Supreme Court of the District of Columbia.

Equity. No. 33201.

THE PUEBLO OF SANTA ROSA, Plaintiff,

vs.

ALBERT B. FALL, Secretary of the Interior, and WILLIAM SPRY,
Commissioner of the General Land Office, Defendants.

Statement of Evidence.

Be it remembered that on November 7, 1922, the above entitled cause came on to be heard before Mr. Justice F. L. Siddons, one of the Justices of the Supreme Court of the District of Columbia, holding a term of said court for equity business, Messrs. Henry P. Blair, Ralph S. Rounds, W. C. Reid and Louis Kleindienst, appearing as counsel on behalf of the plaintiffs, and Messrs. George A. H. Fraser and H. L. Underwood appearing as counsel on behalf of the defendants, and thereupon the following proceedings were had.

The plaintiff to maintain the issues upon its part joined, offered in evidence and the court received the deposition of **Ygnacio Bonillas**, duly taken at Tucson, Arizona, on January 25, 1922, by virtue of the following written stipulation entered into between Louis Kleindienst, Esq., as counsel for the plaintiff and George A. H. Fraser, Esq., as counsel for the defendants, before I. M. Lauder, a duly commissioned Notary Public of Pima County, Arizona, to wit:

Tucson, Arizona, January 25, 1922.

It is stipulated that the testimony of witnesses on behalf of either or both parties to this cause, may be taken beginning this day, at

Tucson, Arizona, and continued from day to day until the respective parties have concluded taking such depositions as they desire.

It is further agreed that no exception shall be taken to 188 the testimony by reason of lack of notice or any other formality such as the Commission to the Notary or the issuing of formal authority, and that Isabel M. Lauder shall act as Notary Public and shall swear all witnesses in this case and take their testimony in shorthand, after which the same shall be reduced to writing and certified to by her, but that it shall not be necessary for the respective witnesses to sign the depositions.

The said witness, Ignacio Bonillas, after being first duly sworn, examined by W. C. Reid, Esq., of counsel for the plaintiff, testified, in substances, as follows:

Direct examination by Mr. Reid:

My name is Ygnacio Bonillas; I am 63 years old, a native citizen of Mexico, temporarily residing in Tucson. My native town is San Ygnacio, Sonora, about 50 miles south of the Arizona border, in the District of Magdalena, which adjoins the District of Altar, at which place as far as I know, the Papago Indians live and have their villages.

I am a mining engineer and surveyor. I attended the primary school at San Ygnacio, then at Magdalena, then in 1870 came to Tucson to attend school till 1880. I attended the Massachusetts Institute of Technology for about 2½ years and was given certificate of proficiency in metallurgy, etc.

I followed mining engineering and surveying till 1913. Up till 1913 I made a specialty of land grants held under title from Spanish and Mexican governments, necessarily specializing in matters of title to lands in this country. I have been witness for claimants for land grants and made surveys of almost all grants held under title issued by the Mexican Government in the southern part of Arizona. Some were located partly in Arizona and partly in Sonora.

Under the State Government of Sonora, I was Mayor of Magdalena two or three times during the eleven years I lived there. 189 All this time I was official representative of the Executive of the State as Prefect of the District, also Perito de Minas, that is, mining expert, an appointment from the Department of Fomento, in the Cabinet of the President, referring to mines, lands and waters. Then I changed residence to Nogales, Sonora, and was Mayor there two or three times. In 1912 I was elected Deputy to the State Legislature and was in the State Congress when President Madero and the Vice President were assassinated. Thereafter I was appointed a member of the Cabinet of Carranza to take charge of two departments, one of which was Fomento, which position I left in charge of a subordinate to act as a member of the Commission, known as the Conference of New London at Atlantic City. While there the President appointed me Ambassador to the United States, I going to Washington in 1917—holding the position until March 1920.

I have been familiar with the Papago Indians of Mexico and the United States since my childhood. I used to play with them and

I learned much of their language. I have traveled some in the Papago Country in Arizona and have been through what is known as the Pueblo of Santa Rosa. The Papago people are civilized or semi-civilized—they are a peaceful working people, engaged in stock raising, agriculture and day labor at the haciendas in Mexico and live a sedentary life. They have their villages, their pueblos. As they inhabit more or less a desert country, they go where there is water for their cattle and to cultivate the ground, always returning to their former homes when the water returns, as far as I know. In Mexican language and understanding they are classed as pueblo Indians. I worked Papago Indians in the Papago country near the Papago villages of Comobabi, Santa Rosa and Quijotoa.

In the District of Altar I made a great many surveys and used them as assistants and also saw them in their fields working. From the time I became acquainted with them up to 1913 in 190 Mexico, and during the early seventies in Arizona, these people governed themselves. They elected their own governors, called chiefs, or governors, and later on these appointments or elections by the Indians in Mexico were confirmed by the Prefect of the District in whose jurisdiction the villages were located.

I recall Francisco Cojocotua being the governor of San Xavier, having been elected by the Papagos about 9 miles from Tucson, Arizona. Later on I remember that Indian agents were appointed to govern them when the Papago reservation was established in San Xavier. The appointment of the Government agents more or less disrupted or stopped the self government of the Papagos that had been in force up to that time.

To the question which elicited the answer contained in the last sentence defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled and exception noted.

I don't know about the Government of councilors in Arizona but I know that in the Papage villages in Sonora, even at the present time they have councilors and places where they meet in council. I have witnessed some of their meetings, but in the early seventies I was a small boy and do not remember that particular part of the government in Arizona. I remember the government in San Xavier very well, and the governor, and they looked up to him as their supreme authority. In their small civil and petty criminal affairs the governor was all the law and the governor as well. I am not a lawyer but have had a great deal to do with land laws and laws relating to water. Frederick Hall is an authority on land laws in Mexico.

In my boyhood days I was acquainted with Bishop Salpointe, the firm of Tully and Ochoa—an old established well known merchandising firm of Southern Arizona—whose members were highly respected citizens. I knew Mr. Cronley to be a highly respected citizen, connected with the water company here and at one time with Tully, Ochoa and Company, as bookkeeper.

191 I don't remember that I ever saw Con Quien but I remember the name and that there was such an Indian. From

what I knew of his reputation in his own community and in this community I understood him to be chief or headman, governor of the Papago Tribe at the head of all of them, west and southwest of Tucson.

To the question which elicited the answer contained in the last sentence defendant objected—ground—opinion evidence witness not qualified—objection overruled—exception noted.

I knew a woman in the early days who lived at San Xavier, named Teodora Troyel—called Dona Teodora. "Dona" is a mark of respect indicating a title, higher intelligence, position or rank. It means Mrs. or Madam. She said she was descended from the Papagos. In the eighties the Papagos could speak more or less Spanish, enough to transact business. They acquired Spanish more rapidly than English, for then there were few English speaking people here. Dona Teodora lived in the building close to or connected with the church, a number of years with her husband, a Swiss or some foreigner. There were no priests there at that time. Her associations were with the Papagos and Mexican people. I think she spoke the Papago, Spanish and English languages.

From my recollection of her, she was a bright intelligent woman, even though uneducated. In my dealings through the Mexican Government with Papago Indians, in the State of Sonora, I am more or less familiar with their title to the lands they occupy. The Government has recognized these lands and the villages they own as belonging to them. In making re-surveys of large tracts of land where some of the Papago villages were located and their lands had been respected in making the original survey, I located these lines and located monuments for them.

These Indian titles as communal titles were as full and complete as the titles of the Mexican people themselves.

192 To the question which elicited the answer contained in the last sentence defendant objected—grounds—incompetent, irrelevant and immaterial, because the status of Indians as citizens is different in Mexico from the United States—objection overruled and exception noted.

They might at all times that I have been familiar with them, dispose of their lands at their own free wills.

During the eighties the Papagos occupied houses of adobe, constructed of posts standing up under a roof, and plastered with mud and in some cases without plaster, but just brush held together with rawhide or fibers from grasses or plants. As far back as I can remember the Indians had a rather hard feeling against the white people because they claimed that they took their lands away from them. I never knew of them organizing like the Apaches to fight the white people. In the early days they organized and joined the Americans to fight the Apaches. I remember an expedition by the Papago Indians of San Xavier and Santa Rosa and the different villages both here and in Sonora joining the Americans and Mexicans in Tucson against the Apaches in Arivaipa Canyon, who had stolen cattle and

horses. One of the leaders was Colonel Wm. Story. The expedition attacked the Apaches in early hours of the morning and killed most of them. The Papagos brought back a number of Apache children as captives. Some of these were sold to Mexican families at San Xavier, and one at Tucson. A married sister of mine who lived at San Xavier bought a little Apache girl, and an aunt, Mrs. Orozco, bought a boy with whom I associated and learned to speak a good deal of the Apache language. This was in the early seventies.

Cross-examination by Mr. Fraser:

I have been to Santa Rosa just once. In saying I was at Santa Rosa the exact place I meant was the village, small at that time but with indications of land being tilled thereabouts. I was also at

Comobabi, a Papago village, quite a distance from Santa Rosa.

193 I do not remember several small villages scattered about at Santa Rosa. I was just at this one place. I do not remember the Indian names of the village of Santa Rosa. I never heard the names of the villages of Kiacheemuck or another called Archi about $1\frac{1}{2}$ or 2 miles east, or another called Akchin about 3 miles south, or another called Anegam about 4 miles north of Kiacheemuck. At the present time I don't think I could define the village I have called Santa Rosa—that was about 39 years ago—I was only at the place once. I paid no particular attention except to know it was an Indian village.

Q. Who told you that it was Santa Rosa? A. Men who knew it and were familiar with the country. I don't remember their names—they were Mexicans working on the Gunsight in the mines there. We were hunting and I remember we went to Santa Rosa to get some little provisions, tortillas and whatever we could get there—we got a pretty good meal.

Q. These Mexicans told you this was Santa Rosa? A. Yes, Mexicans who lived in the community or the country there and were familiar—in fact, not only Mexicans but Papagoes themselves, as they were working there.

A Papago speaking to a white man would speak of that location as Santa Rosa. I used to hear Papagos speak of Santa Rosa to me and to other people. I did not know there were any other names. I don't know what their method would be in calling it Santa Rosa and not calling it the other name. They generally gave the name. I don't see why they would not now. Cobota is an Indian village. I have heard them call it that. There is a place close to the boundary line west of the Indian Poso Verde. There is a place called Zeni; they call it that. There is a place called Chujubi and they invariably call it so and I suppose I could go on naming you a dozen more.

194 I don't know which village of the four you have mentioned is Santa Rosa. When I spoke of the Papagos as semi-civilized I meant they are much more civilized than the Apache but not so civilized as the whites.

As to being nomadic or semi-nomadic or sedentary—if the season is dry they go to a place where there is water and drive their cattle

there and they cultivate that, but they have their villages and pueblos where they were. I have no knowledge of a Papago village from which all the inhabitants have moved away to some other place. I have heard of the village of Tecolote and the Indians are called Tecolotes. I do not know whether or not the Indians have moved away and abandoned that place to live elsewhere. I know of Fresnal close to the boundary line southeast from the Baboquivari. I don't know of a place in Arizona called Quitae, sometimes called Iron Pipe, which village they have given up.

Q. But your knowledge does not extend further than that on the line I have indicated, to the effect that sometimes they do abandon the place altogether and move to another? A. No, it does not.

When I spoke of the Papagos as pueblo Indians I meant the Spanish sense of the word—people living in villages—I did not mean they were Indians living in pueblos instead of Ranches. They live in small places where they have their homes, their cattle; where there are wells and springs and they make corrals for their horses and cattle. I do not intend to draw a comparison between them and the Pueblo Indians of New Mexico. In Spanish the definite meanings of the word "pueblo" are—a town or village, and to speak of a people "el pueblo." A pueblo is a town or village of a small number of houses. One with a larger number of houses is called a "villa." Then next is a city—"la ciudad"—A "congregation," consists of a few houses. Back twenty, thirty or forty years ago I think a pueblo in my native state was considered a town or a community where there were about 500 inhabitants, and down to now also. It had either an alcade or regidores, or a presidente of the municipality.

The Court:

Q. Is he here now talking about Mexican pueblos—pueblos of Mexicans?

195 Mr. Kleindienst: On re-direct he was asked: "Does this all refer to an Indian pueblo or a Mexican pueblo?" He said: "This is a Mexican pueblo. An Indian people is different."

It had to have a Justice of the Peace—Spanish for that is Juez de Paz or Juez Local. It did not have to have an escribano de consejo. It had a police officer, a policia. At the present time you would apply the name, ayuntamiento to the government body of a pueblo. This was true forty years ago.

Q. "So that the word 'pueblo' in its wider sense, not applying the strict legal definition, is it not somewhat distinguished from rancheria as being a place of some systematic and organized form of government, the latter being what we might call a hamlet, that is less fully organized? A. Yes.

Q. Are you familiar with the Pueblo Indians of New Mexico? A. I have been in places in New Mexico and have seen the Indians there, and at the stations, in Albuquerque, and I have seen the Hopi Indians in the Grand Canyon in the north of the State.

Q. Have you resided in their houses? A. I have seen their houses."

I have seen their houses at the Grand Canyon which are entirely different from the Papago dwellings. Forty years ago the Papagos of Mexico practically governed themselves and the Mexican Government let them do so as far as selecting their own authorities. There was one Gobernador to a certain region and as far as I know he was the highest official among the Papagos. So far as I know in Sonora the head chief would be the gobernador of a region or group and the chiefs would be the chiefs of the different villages under his authority.

I think the word "comisario" might be used instead of 196 gobernador, but I don't know from any authority or knowledge. In Senora about forty years ago I knew a good many Papago men and women who spoke Spanish—I cannot tell the proportion. They would bring horses and cattle to Magdalena for sale and spoke Spanish to deal with the people there—the condition was just the same on this side of the line in the number who spoke Spanish. Their knowledge of Spanish on either side of the line was somewhat elementary. I do not know whether the Papago villages had any other officials than the Gobernador either in Sonora or Arizona. He was elected in meetings of the inhabitants. I was never present at the meetings of their council. Each village did not have a council. I think a region or group of villages had a council and I suppose that council would be held wherever there was a matter of importance to the region. I don't know that the office of chief or gobernador was hereditary. I would not so testify because I do not know.

"Q. On any of these points about the Papago government and organization, Mr. Bonillas, would you wish to stand by your statements if they were contradicted by a number of old Papagos themselves? A. I would stand by them as far as I know.

Q. It would cause you to doubt the correctness of your statement if you found that the Papagos themselves stated to the contrary? A. As to that I would say that a matter of truth or a matter of fact may be viewed in a different manner, and I would think that the information I have on the subject, defined as I have, was the truth and were positive facts at the time. There may be factors or elements that I was not acquainted with and am not at the present time."

I never made any special study of Papago government or organization—just what I came in contact with and I was always very much interested in the aborigines of my country and the countries that I have been in. The fact that I have learned a little of their language, and the Apache language would show that I have taken a good deal of interest but no special study. As far as I know in Sonora this organization of chief and council still exists and up

to 8 or 10 years ago in the village of Quitobaca in the District of Altar it existed. I was making surveys there and 197 the gobernador himself went with me on the surveys—he brought along 8 or 10 more who was assisting in the determining of the boundaries of their land there, and he showed me and I

went into the place where they held their council. He showed me the seats where they sat around, the ramada or kind of pergola in front of the place where they would sit when it was too hot to work inside. He brought some members of the council with him. He took some of these leading men with him when I had the question of a boundary line to decide.

Back in the seventies I think the Papagos had a council at San Xavier—at that time I was only familiar with this place and knew of no other communities in Arizona having a council.

Bishop Salpointe, Ochoa, Mr. Cronley and other citizens of Tucson in 1880 did not speak Papago that I know of. I received the impression that Con Quien was head chief of all the Papagos just by hearsay. I never heard what the people of Tecolote or the southern Papagos generally thought of his authority.

"Q. You would have ascertained if he had been head chief of all the Papagos? A. I would not."

I knew this Dona Teodora when I was a boy, perhaps in 1877 or 1878 or so—not in later years—then she must have been 40 or 45 years old.

"Q. You spoke of her as being Dona Theodora—we use that expression to a lady that we wish to speak to in a complimentary way, do we not? A. Yes."

I knew nothing at all of her reputation. I think I heard her speak Papago. I remember that she claimed to be a descendant of the Papagos and that she claimed a part of the lands that she had—a right to the land at San Xavier. I do not know of my own knowledge whether or not she could speak Papago.

I am familiar in a general way with Mexican laws affecting land titles.

"Q. Is it not true that while Mexico considers the Indians of all sorts to be on an absolute political equality, they still consider the

Indian title to lands to be somewhat different, that is, the
198 original Indian had merely a title of occupancy and possession and not a fee title unless the government grants them the fee title, is that correct? A. That is correct, but if you will let me I will add——"

Mr. Fraser: Let your counsel bring that out.

Q. You said also that the Indians have a right to sell their land titles or whatever it might be—is it not true that under special laws they could do it, but only under the authority and with the cognizance of some government officer it could be done? A. Not that I know of.

Q. Possibly you have not looked into that particular point? A. The land granted to communities, whether Indians or otherwise, once a participant in this grant could define himself, he could at all times sell his interest in the community land."

Not his town lot, but his interest in the community whatever that might be. Laws and regulations were issued so that this community land could be parted, partitioned or subdivided so that the inhabitants or participants could have a well defined parcel of land individually

and, of course, he could sell well defined land, or at any time he could sell the right and interest in the community land though not parted or partitioned.

"Q. Has the original Spanish law ever been changed whereby the fee title of the pueblo lands never passed from the General Government but remained in the Sovereign? A. Yes, many years back under the government of the Republic. In the first place the laws recognized all land grants by the Spanish government to communities, to villages or to the State. It granted them all lands either within metes and bounds or else by acres and distances.

Q. Did the land have to be definitely set off? A. Whenever it came to partitioning the land and surveying or to define the boundaries, there was a great many disputes between the different tracts and towns and parcels of land, and survey after survey was made."

The title passed when the government issued a title and provided the survey and all other proceedings. In speaking of the houses constructed of adobe in 1880, I refer to both Sonora and Arizona. I remember a number of houses at San Xavier and the Papagos built them in Altar, Caborea and Pitiquite—I cannot say what proportion was built of cactus ribs roofed with grass. I saw a number of each—they were one story houses and I don't remember any with glass windows—I remember openings with little bars or sticks just to prevent anybody from getting in—those made with the poles and brush walls had no windows, only openings for doors—these could be built in a few days depending upon the number of people that would work on them. They would last a good many years. The mud might fall off but they would put it back again.

"Q. In all these details of construction of Papago houses would you uphold your ideas if the Papagos themselves stated they constructed them differently? A. If I came to the conclusion through my own observations. I would not for a moment doubt what their own understanding might be, but I would hold to my own conception as the truth."

I have seen these cactus rib plastered houses, not particularly Papago houses but built just the same way on ranches and in villages, used by other people—last twenty years they would be just as good. When I said in the early days Papagos had hard feelings against the whites because they took their lands away—I especially speak of Sonora, where I was more familiar with the Indians. In Arizona, at San Xavier I used to hear the Papagos speak of their being interfered with in their rights and the lands and what they considered their rights.

"Q. If that were true in Sonora, the Papagos did have some trouble that way despite their title. The fact that they had a title of some sort did not prevent the lands from being taken away from them. A. I think that is a very general experience with the Indians.

Q. And it was true in Sonora? A. Yes.

Q. Did the Government take any steps to protect them in their possession? A. I don't know of their bringing up their difference to the Government."

In the seventies the Papagos on both sides of the line were subject to raids from the Apaches who stole their horses and cattle. In those days it was hard for them to keep their horses and cattle. They had to keep their eyes open. When they took a trail they stayed after the Apaches until they got back their stock. I don't know that in those days the Papagos were large owners of cattle. So far as I know San Xavier was the most complete and best organized perhaps, of the Papago villages in Arizona. In 1880 it was just like any other Papago village; they had their scattered houses, fields, cattle and horses whenever they had community land. I don't know how it is at the present time, but I have been there and they have pretty good houses and their own club and school. In 1880 there was nothing of that sort. All villages then were much as they are now with scattered houses and fields for a mile or so away. In speaking
 201 of community lands I mean the general range—each family had their own parcels of land under cultivation. They had no fences.

"Q. In testifying a while ago as to what constituted a pueblo, you spoke of wells being one of the essential features of the place. Do you consider that of importance, an element of importance? A. I think it a very important element when there was no other way to get water."

It depends upon the topography of the place whether a well was essential or not. Generally a church had significance under the Spanish and Mexican rule relative to pueblos. All these tribes of Indians were originally civilized by missionaries, and there was generally a little place of worship where they could gather.

Redirect examination by Mr. Reid:

"Q. In your cross-examination, Mr. Bonillas, when you went into a detailed statement of pueblos, ayuntamiento and alcade you were or not referring to Mexican pueblos and not to Indian pueblos? A. Yes."

I do not think that Indian pueblos were organized as completely as Mexican pueblos in so far as officers were concerned. I don't think they had justices of the peace or policemen. I think the governor was the principal authority. As far as I know I think the governor himself acted in small matters and he and council acted in more important matters, as governor, judge and officers. Gobernador in Spanish is used as Captain as well. It is my impression, although I have no special information, that Captain is used in the small villages and gobernador or chief in larger organizations. In my cross-examination as to Indian land titles I was going to say that in Mexico, as in this country, I think the titles based on physical, undisputed
 202 possession are considered the very best titles, with or without an express grant—so that in Mexico after possession of that sort for a certain number of years, he could prescribe a certain area of land of about 2500 hectares. Relative to Indian titles I think it was the practice under the Spanish law to respect their titles to the land that they occupied as even superior to the title to the land by

the government itself and without an express grant, although I have no particular information about it—I think they respected the lands in their possession. I think there was no reservation at San Xavier when I first came there. I don't know of any Indian agent until probably the late seventies.

“Q. Is it not a fact that the Papago Indians have always claimed as their land in Arizona, all that large scope of country southwest of Tucson and San Xavier, extending a great many miles in all directions? A. I have always understood that they called it the Papago country.”

I have had many experiences with land grant titles in Arizona, which were supposed to have been made by the Mexican government. Grants made in the regular way by a regular application to the government, and regular surveys. Sometimes I have known surveys for two leagues and I have known 30,000 square leagues inside one of these grants. It was through the regular proceedings of court they were offered for sale and the highest bidder would get them.

“Q. Then in Arizona you did not have in this part of the country what was called community or common grants? A. Not that I know of. I don't know whether or not they had town grants in what is now New Mexico.”

Recross-examination by Mr. Fraser:

“Q. You have, Mr. Bonillas, mentioned that a title might be obtained by long occupation and residence, under the Mexican law.

These Papagos have resided from time immemorial, have they
203 not, both in Sonora and Arizona? Do you mean to say that

by that residence they acquire title as against the Mexican government which they could maintain at law against the Mexican government? A. The Mexican government does not question their rights.

Q. Their possessory rights, but I am making a distinction between their possessory rights and fee title. A. The Mexican government does not question their possessory rights.

Q. But the fee title? These lands have been given subject to the Indian possession? A. It would not be temporary possession. It grants them the right to these lands, and their right to these lands and the surveys of them have been made without their paying a cent for the lands.” * * *

Q. Are you familiar with the decree of President Juarez of 1867 which gave the Indians the right to exchange their possessory title for a fee title if the government granted it? A. It gave the Mexican government an opportunity to confirm the rights of these Indians. The government recognizes the right.

Q. That decree provided that the Indian might obtain recognition by the government, of the land that the Indian occupied and that he possessed at that time? A. No, my understanding is that, having the right to this land, by certain procedure they could have this land defined and title issued. A documentary title in document form.

Q. They had no documentary title up to that time, and
 204 they had been very largely dispossessed up to that time, and
 this was a measure whereby the possessory title remaining in
 some of the Indians was changed by the government into a fee title
 or grant title. Is not that correct? A. My impression is that the
 government recognized their rights to this land, and by having sur-
 veys made, determining the boundaries and areas, they could have a
 documentary title instead of possession, which was recognized to be
 the very best title.

Q. You have already stated, Mr. Bonillas, that Hall's Mexican
 Land Laws is a recognized authority on that subject? A. Yes.

Q. I call your attention to Section 645, Hall's Mexican Land Laws
 in which it is stated: 'In all the titles of property which were issued
 by the adjudication of public lands care must be taken to express that
 they are given without injury to third parties, and although such
 injury does not exist, strictly speaking, in respect to the lands which
 are in possession of the Indians when they lack their respective title
 given by competent authority, notwithstanding the rule has been
 carried out by reason of equity and public interest of avoiding de-
 spoiling them of the possession which they may have of said land'
 and then it goes on in the same language which you may read if you
 wish to refresh your memory, to provide that they ascertain the In-
 dian in actual possession of certain lands and then have them notify
 the Indian, and then he may appear immediately and solicit
 205 the respective title of the land which they are in possession of
 even when no one disputes them, under the conception that
 said title should be issued to them gratis, the property being thus
 legitimized which might otherwise be claimed.' Does not that
 clearly indicate that the government felt that it might claim that
 title but was willing that the Indian appear? It would not only
 recognize their title of possession but raise it to a higher title by
 granting the fee? A. It would seem so."

Redirect examination by Mr. Reid:

I understand that such proceedings made the evidence of title
 more certain and avoided future troubles such as claimants to these
 lands. It would seem by the language relative to the Indians—
 "when they lack their respective title given by competent authority,"
 that the Indians lack the fee title which the government could give
 them. I do not care to go into a close interpretation or definition of
 the law. I am not a lawyer. I know what my experience has been
 in these matters, and the way the authorities feel about it when it
 comes to land owned by a community of Indians. I know the Indians
 generally have the sympathy of everybody except the land grabber.
 I mean a good many of the little villages that are close to the
 haciendas, the big land owners say the Indians are a thorn in their
 side, they move their cattle on their lands, cut their timber, steal
 their calves and are in the way generally. They try to drive the
 Indians away and have done so in a good many instances to my
 knowledge. This last upheaval in that country has restored a good

many of these communities and hundreds of hectares of land that were taken away in that manner. A great deal of objection followed by the land owner, but they are giving much of these lands back.

I mean restricted them as they call it there. The outside world calls it radicalism but it is absolute justice.

Pursuant to the first stipulation herein referred to, the deposition of **O. A. Larrazola** was taken at Albuquerque, New Mexico, on behalf of the plaintiff. W. C. Reid present for plaintiff and Geo. A. H. Fraser present for defendant, which was introduced and contained evidence as follows:

Direct examination by Mr. Reid:

My name is O. A. Larrazola; 62 years of age, resident of Albuquerque, New Mexico since 1895. I was governor of New Mexico from January 1st, 1919 till noon January 1st, 1921. Before 1895 I resided in El Paso, Texas. I was a school boy in Tucson, Arizona, 1870 to February 1878. I absented myself from Tucson, attending school in Las Cruces, New Mexico, part of the years 1872-1873, and in Santa Fe, New Mexico from April to December 1875 and 1876. I was born at Allende, State of Chihuahua, Republic of Mexico. During my residence in Tucson I resided with the Right Rev. J. B. Salpointe, who was the Vicar General of Arizona and who became Archbishop of Santa Fe, New Mexico. I frequently went to San Xavier every year during the time I was in Arizona. It was then what it is now, an Indian pueblo, and in addition there was one of the most beautiful churches in the West. During these years I was familiar with the relations existing between Bishop Salpointe and the Papago Indians. His relation to them was that of spiritual guide and director, he being the head of the Catholic Church in that then territory and as such visited San Xavier quite often, and he took deep interest in their general welfare, advising and helping them along in every way he could.

To the question which elicited the answer contained in the last sentence, defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled; exception noted.

The attachment between them was mutual, he being as much attached to them as they were to him.

207 To the question which elicited the answer contained in the last sentence, defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled; exception noted.

I was only a boy and was not consulted in such things but I know that they did counsel with him in their worldly interests.

To the question which elicited the answer contained in the last sentence, defendant objected; grounds, incompetent, irrelevant and immaterial; objection overruled; exception noted.

All the Indians that I ever saw or conversed with did speak Spanish. It was rather a poor or broken Spanish. They understood Spanish very well—there were few English speaking people in Tucson. At San Xavier the time I lived there some Indian houses were made of adobe, others of logs standing up but I think all one story. They were comfortable houses. The house I first lived in was not as good as those of the Indians. These Papago Indians had fixed residences, of course, during the summer while the crops were growing many of them would live on their farms in temporary dwellings as they wanted to take care of the crops. I never traveled down into the Papago country other than San Xavier. During the time I knew the Papago Indians they were a peaceful and law abiding people. I have no recollection of them ever being put in jail charged with any kind of an offense. They were industrious in their way, devoted themselves to cultivating the soil and in a limited way to livestock raising. They were Catholics and attended to their religious duties as such quite faithfully; otherwise, they were like the great bulk of our New Mexico Pueblo Indians, unlearned and uncultured as a general rule. From my observations, being those of a boy about 18 years of age, I could say that the Indians were very moral. I have visited the pueblo of Taos, New Mexico, several times.

208 To the question which elicited the answer contained in the last sentence, defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled.

"A. I have no recollection of their ever having called on me in my official capacity upon any business affairs or otherwise.

Q. Those Indians also speak Spanish? A. Yes, sir, they do as a rule.

Q. And you have been in their houses and homes?

Mr. Fraser: There I made the same objection, your Honor, and may it be understood that the objection made concerning the testimony may apply to all testimony regarding the Taos Indians, or other New Mexico Indians.

The Court: I think it very desirable.

A. I have."

I am more or less familiar with all the pueblo Indians and tribes in New Mexico. Regarding civilization among them and the Taos and Papago Indians, their general intellectual standards, habits and customs, they are very much alike, also as peaceful, quiet, law abiding citizens. As to the present standard of the Papagos, I cannot say very much.

When I resided in Tucson I was well acquainted with the members of the firm of Tully and Ochoa and knew them personally.

Cross-examination by Mr. Fraser:

During the time I lived at Tucson I was from 10 to 18 years old. Two years of this time I was absent attending school, leaving my total residence in Tucson about 5½ years, during all of which time I lived with Bishop Salpointe. I was an intimate friend of his—he

was my benefactor and protector. I accompanied the Bishop in practically all of his trips from 1870 to 1878 except when I was away attending school. I never learned of any disagreements between the Bishop and the Papagos, if there were any. I never learned that they disagreed over the Bishop's attempt to collect tithes from them for the reason that no tithes were ever attempted to be collected from the Indians. I never heard that the Bishop claimed more land at San Xavier than the Indians acknowledged and never heard of such a agreement. My observations were those of a boy. I took pretty close notice of everything that I saw. The Indians at San Xavier were very simple indeed and confiding in him. In a general way the Indians, on account of their intimacy would probably trust in everything that the Bishop told them.

"Q. And if anyone whom they trusted as they did the Bishop, would ask them they would enter into agreements with them and sign papers as they did for the Bishop? A. You will find it is a hard thing to get an Indian to sign a paper.

Q. I suppose that if the Bishop told them to do it they would do it? A. Not unless they absolutely knew what they were doing, that would be true of almost any white man.

Q. I suppose their knowledge of Spanish was very crude? A. Enough to buy and sell; just enough to get along.

I have no recollection that the Indian houses at San Xavier were made of cactus ribs. It was a very old settlement. The Indians there were subjected to the influence of Spain and Mexico since about the middle of the 16th *country*. The old church was built by Franciscan Friars—history shows that it was built in the 17th century and it would naturally be true that these Indians have had more association with Spain and Mexico than the other Papagos. The

houses that the Mexicans used in the early days were made of adobe and these San Xavier Indians were very much under Mexican influence. I do not know whether or not the Papagos and the pueblo Indians of New Mexico are of the same stock. I have not gone into that study. I cannot say that I have noticed any difference from my observations. I might say that they do not mix with others as freely as we do. They have always kept to, and intermarried among themselves, hardly ever do they intermarry with other races, and if you try to engage an Indian in conversation you have a job on your hands.

The Taos Indians live in 4 or 5 story houses, one on top of the other and the pueblo of today is not exactly as it was forty or fifty years ago. Originally you had to climb to the roof to get in. Today you find doors and windows on the ground floor, but the shape of the pueblo remains the same.

I know from general reputation that each pueblo has a "kiva." I have never been in their private places. I have not examined the form of government of the pueblo Indians but I know of it in a general way, what the jurisdiction of their tribal officers is I cannot tell, they have their war chiefs called caciques and they have their judges who try those who are charged with violation of their laws among themselves.

Redirect examination by Mr. Reid:

I believe these officers are elected annually but I don't know just exactly the length of their term of office. I never learned to speak Papago. In the days that I lived at Tucson these Papago Indians were known by general reputation as pueblo Indians.

When I speak of the form of government of Indians consisting of war chiefs and judges, I refer to the Pueblo Indians of New Mexico and was not attempting to describe the tribal government of the Papago Indians. As to those, as I stated, I lived among them when I was a boy and did not learn much about them.

211 Recross-examination by Mr. Fraser:

When I say the Papago Indians were called pueblo Indians I spoke of them as people that lived in a community. I was not attempting to make an ethnological comparison with the New Mexico Pueblo Indians. In the days that I lived at Tucson I never heard of a Papago Community or individual Indian selling his land.

Pursuant to the same stipulation hereinbefore described at Tucson, Arizona, January 28, 1922, the deposition of **Alexander McKay** was taken on behalf of plaintiff, and after being duly sworn, testified as follows:

Direct examination by Mr. Reid:

My name is Alexander McKay; reside here in Tucson, and have resided in this community for the past 40 years. I came to Tucson in January, 1878. The last 40 years my chief occupation was mining, mostly in the western part around Quijoted and Comobabi and through that western country which places are located in the Papago reservation or the Papago country. I have had more or less to do with the Papago people during the past 44 years. A good many of them have worked for me from time to time. The Papagos have always been law abiding and have very little trouble among themselves.

To the question which elicited the answer contained in the last sentence, defendant objected; grounds, incompetent, irrelevant and immaterial; objection overruled; exception noted.

They raise horses and cattle and do farming on a small scale for a livelihood. In a general way the country occupied by the Papagos during the years that I have been here is all the country west of the Coyote mountains, south to the Mexican line and north to the Pinal County line. At the time I came here they occupied all of that country there to the exclusion of all other people. There were very few whites in the country then. I have prospected over nearly all the mountains out in that country.

212 "Q. Are or not these mountains in your judgment of highly mineralized character?

To the above question defendants objected; grounds, opinion evidence, immaterial, irrelevant, and incompetent; objection sustained; exception noted.

A. Yes—All mineralized.

Q. Have there or not been valuable mines opened up in these mountains in the past 44 years? A. Yes, I opened some myself.

To which question the defendant objected on the same ground; same ruling; exception noted.

“Q. Have you opened up any mines that afterwards became valuable? A. Yes, sir.

“Q. What did you open up? A. The Quijotoa property for one.

Q. Did that afterward become valuable A. Yes.

Q. What other one? A. The Twenty Stamp Mill was another.”

I opened the Beck mine and the Desert mine. I was a member in the Fourteenth Legislature of Arizona. I had a commission for sheriff by acclamation at one time in Arizona but I resigned. I had a family here in the early days. Some living in this country yet. The names of some of the principal pueblos or communities of the Papagos living in the Papago country are Cababi, Comobabi, Santa Rosa, Covered Wells, Fresnal, San Miguel and several others—I forget their names. I know a district in the Papago country known as the Pueblo of Santa Rosa; I have known the place about 44 years, ever since I have been in the country. That is the common name it has gone by. I don't know the Indian name for Santa Rosa. The inhabitants of Santa Rosa and other communities around there refer to it as Santa Rosa and have done so. They used to have a fiesta down there every fall and from all the surrounding
213 country they would come to Santa Rosa. I have been there many times.

I owned a property that was pretty well opened up in the Sheridan Mountains which is one of the Santa Rosa range. I also prospected all through Black Mountain but I found nothing. I am acquainted with the principal peaks of the mountains in that country.

“Q. Do you know a place or a point or a mountain by the name of Kabitque? A. That is the Santa Rosa mountains I believe.

Q. Do you know a place or point known as Okomo? A. Yes, sir.

Q. Is there a place in that country or a district or point known as Mescalero? A. That is what we used to call the White Mountains, I believe, close to the Poso Blanco.

Q. Do you know another point in that country called Sierra Cabeza? A. Yes, sir.

Q. Are all the places and points mentioned prominent? A. Yes, sir.

Q. So can one stand in various places in the Santa Rosa valley and point out these places? A. Yes, I believe you can see them all from a point in the Comobabi mountains.”

The Papago Indians have had permanent places of abode ever since I knew them. In the summer they go down into valleys where there is water and when the water dries up they go back into the hills where there is permanent water and return to the valleys when the water comes. They have homes in each of the places. Their homes

are now mostly adobe houses, good substantial buildings. When I first came into the country they had houses and wickiups, mostly made of brush and grass and plastered with mud; also they had stockade houses. Around San Xavier they had wickiups and adobe.

The word "adobe" implies sun-dried brick.

214 There houses in 1878 were well adapted to the place. They plastered them up with mud when there were any cracks. These people governed themselves. I don't know the details of their government. I do know in a general way.

"Q. You may state that. A. They called the old chief Con Quien (Con Quien) Jose Maria Ochoa. He was the chief of all the Papagos.

Q. Do you know that? A. Well, I lived in the same vicinity with him for over two years—knew the family well—I knew all about him.

Q. Were you ever present at any assembly of the head men of the other villages at the place where Con Quien lived? A. They had their meetings at the place where I lived, yes at the Picacho mine.

Q. Were you or not able to understand Papago sufficiently to know what they said to each other? A. I did not.

Q. Since that time have you acquired any of the Papago language? A. A few words but very little, sufficient maybe to work with them. They talked mostly Spanish anyway."

I speak and talk Spanish fairly well enough to get along with them anyhow. I cannot give any approximate date of the death of Con Quien, or Jose Maria Ochoa—It was a long time ago, I know that. His wife is still living, I understand, and one son. She is going blind, I believe, now. I knew her very well 40 years ago—I have not seen her in the last four or five years.

"Q. Was it or not a matter of common knowledge in that country and among the people whom you knew in San Xavier and Tucson and other places and vicinities that Jose Maria Ochoa was the

215 Governor or head chief of all the Papago Indians in Arizona?

A. Yes, he had several meetings at the Picaccho Mine when I was there and he called the chiefs or captains from the other villages to meet them."

In the early days I knew the individuals very well in the firm of Tully, Ochoa and Company. It was P. R. Tully. Ochoa's name was Esteban. I don't know any other, just those two. I knew Cronley in the early days very well—he was a cattle man—I know he was bookkeeper for Tully, Ochoa and Company, and later he came to be a cattle man and died here a year or two ago out on Sixth Avenue.

"Q. Do you know the reputation of these men in the community in which they lived?"

To which question the defendant objected; grounds, incompetent, irrelevant and immaterial; objection sustained; exception noted.

In the early days I knew a woman by the name of Teodora Trojel. I have been at her house at San Xavier Mission. I was not well

acquainted with her but I knew her and who she was. I understand she belonged to the Papago race. I have talked with her in the Spanish language. I don't know whether or not she spoke or understood English. Her husband did. I think she was a very intelligent lady.

Q. Do you know or not her reputation in the community in which she resided, as to her being respectable?

To which question the defendant objected on the ground immaterial, irrelevant, and incompetent; objection sustained; exception noted.

"A. During the years I lived in the Papago country the Papagos were always peaceful, law abiding citizens."

216 To the question which elicited the answer contained in the last sentence, defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled; exception noted.

Relative to their property and civil matters one against the other or against some outsider they never had any trouble among themselves when I lived among them. It was before my time but I know of one time the Papagos organized to fight off the Apaches. They joined the Mexicans and Americans. The Papagos supplied grain and forage and other supplies of that sort to the American troops in this vicinity in small quantities. They supplied corn, watermelons, beans and wheat to them in the early days. They also brought salt up from the Gulf to the old Pichacho mine where Con Quien used to hold his meetings. They brought it in on mules and horses. When the arroyos were running they farmed by irrigation. There was no permanent irrigation water then. If they had any rains it was in July, August and September. It rained somewhat in the winter time. The latter part of January ordinarily they have wheat growing—they plant in about the same places or fields each year. In the early days if they fenced the fields it was with brush fences. In the early days Americans or Mexican people did not attempt to settle on the lands of the Papagos or encroach upon them. If anyone came in there and wanted to stay and settle I think they drove them off—I know they killed two when I was out there but the reason for killing them I don't know. That was in the valley between the Quijoted and the Picacho mine.

Cross-examination by Mr. Fraser:

In my mining operations I was prospector, promotor and one thing or another. I was a mine owner. The first two years I worked with my hands—then I got a little wealth out there and did not have to. My ideas of the Papagos were largely due to their working for me and with me and associating with them and dealing in a business way, trading and working. It was just in this
217 business way that I knew them. I never made any special study of their ways of living nor did I specially examine into their methods of government or anything like that. It was just the relationship of employer and employee.

"Q. You said in answer to a question on direct examination that you had been at the Pueblo of Santa Rosa. From whom did you ever hear that expression, 'Pueblo of Santa Rosa?'" A. Well I lived in the Quijoteds and old Con Quien and their men would go down there every year to Santa Rosa village and hold a fiesta in the fall of the year. They called it the Santa Rosa. I came through going to the Sheridan range and then over to the Santa Rosa. It is close to the Santa Rosa Mountains anyway.

Q. Do you know which of the three or four villages there is called the Santa Rosa? A. At that time there was only one village there that I know of but all along the valley there were little ranches and each of these ranches had a Papago name but I cannot remember them.

Q. How recently have you been over the Santa Rosa country? A. I was over there not long ago. I went up to the Casa Grande and went through it.

Q. Perhaps you noticed that there are several villages around the region of Santa Rosa? I was just wondering which one you meant. A. The one lying directly west of the Santa Rosa Mountains.

Q. Was it the village that Papagos call the Kiacheemuck? "A. No, I think that is further toward Casa Grande.

Q. Was it the village that the Papagos call Archi? "A. They
218 call it Santa Rosa.

Q. But the Papagos have their own names for their villages, do they not? A. They may have them but I know the Indians call it the Santa Rosa.

Q. Which of these villages was it, can you not give a more definite description of this village called Santa Rosa? A. I traveled from what they called the Santa Rosa village over in the valley beyond the place they call Pei Pei (or Peepeequite), I crossed the south end of the Santa Rosa Mountains, went into this village, saw an old Indian there, Francisco his name was. His boys are working now for the West Cattle Company. He wanted to know where I was going and I told him I was going to the Sheridan Mountains to look at a gold mine there that belonged to an old man who was killed at Tombstone. I asked him the name of the village and he told me Santa Rosa.

Q. You were speaking in Spanish? A. Yes, sir.

Q. It is true is it not that the Papagos would speak Spanish and would use the name Santa Rosa in speaking to a white man? A. Yes, they called it Santa Rosa.

Q. But you don't know whether they called it that among themselves, do you? A. Yes, when they were speaking Spanish.

Q. Do you mean to deny that it had a Papago name as well as this name? A. No, I do not know that.

Q. Would this village that you call Santa Rosa include Anegan? A. I don't know but I have been at Santa Rosa many times since. Boykin used to run a store there.

Q. This Santa Rosa was one village and not a group of several villages? A. One village."

I said I believed Kabitque was over in the Santa Rosa Mountains.

I have heard it called that by the Papagos. I have heard
219 the Papagos use the word, "Kiacheemuck" or something
like that. The mountain I call the Santa Rosa Mountain
is one mountain. On the north there is a long tail but we call it
the Black Mountain—the Indians call it the Santa Rosa Mountains.
The valley extends from North to South four miles, perhaps five.
Okomo is in the Comobabis. That is about 25 miles south and east
from there. It is on the edge of the Santa Rosa valley. It is a moun-
tain with an Indian or two living there. There is a little spring—
that is North Comobabi. I suppose it is about 25 miles as the crow
flies. We called Mescalero White Mountains. I camped there.
It is close to Poso Blanco, right at Poso Blanco. It is south and
west from this village I call Santa Rosa. Mescalero would be west
and possibly a little north from Okomo. The distance from Mescalero to Okomo would be about 20 or 25 miles. I don't know who
called the place Mescalero. I heard the Indians use the name.
Mescalero means a place where they make mescal. I never knew
of any mescal being manufactured there. There is no mescal
growing around there.

"Q. In your direct testimony you qualified your definition of
Mescalero as White Mountains—you said you people used to call
it that? A. Yes, we called it that.

Q. But you would not be certain about it. A. Oh, no.

Q. The Sierra Cabeza, where is that? A. That is north of
the Vekol mine a few miles.

Q. About how many? A. Oh, possibly, well it must be 10 miles.
From the White Mountains it would be 15 more perhaps 30 miles.
I don't know.

Q. Has this Sierra Cabeza any other name? A. Yes.

Q. What is it called? A. Table Mountain.

Q. Did you ever hear the Papagos use the term Sierra Cabeza?

A. Yes, that is the term they used. The Americans call it
220 Table Mountain.

Q. Do you know the Papago name for it? A. I don't
believe I know."

I don't believe I know of any village that was absolutely abandoned. There were people at Tecolote when I was there last. There are always some people there. It was never much larger than it is now. I never knew of any difference. Fresno is no different. I don't know a place called Iron Pipe but know Steam Pump. It never was a large village. There was a man or two there when the pump was running, and the village was a little farther west from where it is today, with a church in it. But at the Pump the pump man and only an Indian or two live. Since the pump has been abandoned there are no more houses there. About 40 years ago the adobe house was an exception, most of them were built of cactus ribs, plastered with mud and had grass roofs. This class of house is different from a wickiup which is a house shaped like a half an egg, fixed up with cactus ribs and grass and brush over

it and plastered together. They had no windows, I guess they were a sort of very temporary building easily constructed. I don't think they would last very long. I stated that I understood Con Quien was chief of all the Papagos.

"Q. Would you uphold that opinion if you found for example that the people of Tecolote had denied that he was ever their chief? A. I would say that they were liars, for I know that he was.

Q. You uphold your judgment even as against the statement of the Papagos themselves, would you? A. Yes, sir, I would—I know he was their chief.

Q. If the people at Cacca deny that Con Quien was ever their chief, what would you say to that? A. I don't know anything about these people. I never heard the name before.

Q. But so far as any Papagos' statement that he was not
221 head chief over the whole tribe, what conclusion would you come to? Would you assert that he was, notwithstanding their statement to the contrary? A. I certainly would, because I know."

I was present at meetings at the Picacho mine—the captains came there from all the different villages—they sent them as representatives. They made their laws there, I suppose—that is what I understood they assembled for. I was listening to them talk. They were talking Papago but Con Quien told me in Spanish that they were going to have a meeting and for that they all came along, but from my own knowledge I don't profess to know what they were doing. I said that the captains were present from all the villages of that neighborhood—there must have been 30 or 40 at one time; anyway, 20 or 30 of them.

"Q. I suppose you know at one time there must have been 100 villages in the Papago country? A. I did not.

Q. How many of these chiefs were present on the occasion that you remember that you could define as being chiefs of the different villages? A. I did not count them—I was acquainted with several of the chiefs from the different villages and I talked with them in Spanish.

Q. You don't know of your own knowledge, Mr. McKay, that at any of these meetings or assemblies there was a chief from the Coyote village, do you? A. No, I do not know which was chief of the Coyote village at that time—I knew several of the chiefs—I did not know them all.

Q. Of your own knowledge you would not state that any of the men present were chiefs of certain villages except those you did know and see, is that correct? A. Certainly that is correct.

Q. Did the head man of each village have a council to
222 advise him? A. They were all talking together among themselves. Con Quien did the principal speaking but they all did some talking.

Q. But there was a council? A. Well, they were all sitting in a row and were talking with Con Quien in the middle and he was explaining things to them.

Q. Did you ever know of a meeting in any certain village?
A. When I was there they held their meetings in this place for there was an adobe house and a church.

Q. Do you remember how many meetings were held? A. Two.

Q. Can you tell about what year this was in? A. Yes, '78 and '79.

Q. Do you know what subject they were talking on? A. I do not.

Q. Do you happen to know the name of Con Quien's wife?
A. I do not—I forget it—I knew her very well, I knew the whole family.

Q. From your own knowledge which villages were actually represented by the chiefs or captains at either of these two council meetings? A. The village this side of the Baboquivari Peak. Casador was the name of the chief from that village and the chiefs came from that village. I forget the names of them.

Q. You cannot name them of your own knowledge? A. No, no, I don't remember the Indians names.

Q. Do you remember the names of any of the chiefs? A. Casador was one—he was killed—Joaquin was another—they were men I was well acquainted with."

Referring to Tully, Ochoa and Company, of Tucson, I don't think these men spoke Papago. Teodora Trojel was a Papago.

"Q. Do you know that for certain? A. I believe she was.

Q. Is it not true that she might be Mexican? A. No, I don't think so.

Q. You don't know then do you? A. I can tell a Papago
223 when I see one.

Q. Do you know whether or not she was a Yaqui? A. I don't know—I never asked her what she was."

I spoke to her in Spanish—I knew her husband spoke English—I never spoke to her in Papago.

"Q. Although she was intelligent, she was uneducated, was she not? A. That I don't know.

Q. You said she was respectable so far as you know? A. Yes.

Q. Did you ever live at San Xavier? A. No.

Q. How often did you speak to her, this woman Teodora Trojel?
A. I don't know but once, I went to her house once to inquire about a horse—that is the only time—I saw her several times.

Q. You don't propose to state, do you, what her reputation might have been at San Xavier? A. No."

The Papagos made a pond which they called a charco for stock purposes. The charcos were in a low level place and they could take the water out of them. They irrigated from streams mostly which ran down the mountain sides into the valleys. When the water came down they would turn it on their little patch of land. If it rained they got a crop, and if it did not rain they got nothing. They did not make reservoirs for irrigation purposes. The charcos were also used for drinking and domestic purposes.

Redirect examination by Mr. Reid:

The people living on the rancherias in the Santa Rosa country or district, were known as Santa Rosa Indians.

"Q. Were they, if you know, under the chief and governing body of Santa Rosa? A. Under their chief, yes, sir."

224 The way I learned of the Meeting at the Picacho mine, was that the chiefs whom I knew in the surrounding villages told me. Con Quien always told me. On the day set for a meeting the various captains from the various villages attended. I was never present when Teodra Trojel talked to any Papago. I had no idea of the length of time, but she lived a long time at the house were I met her. She lived at San Xavier — all Papagos lived there.

Direct examination by Mr. Fraser:

Q. Were they all Papagos or were there some Mexicans? A. All Papagos that I know of. The Mexicans did not live very well with the Papagos."

The Papagos going from the mountain village to the valleys, or from the valleys to the mountains, did not migrate in a body, but they all came back to their own villages when there was water. It is true that Santa Rosa was the name applied to any Indian living in that immediate vicinity — they were all called Santa Rosa Indians.

Examination by Mr. Reid:

I don't know about San Xavier, but the Mexican people and the Papagos did not mix very well up in the country. They killed a couple of men and when I asked Con Quien why they killed these two Mexicans down in the valley he told me that the Papagos did not want to know the reason why the Americans hung a man in Tucson so I did not ask him any more about it.

Pursuant to the same stipulation hereinbefore described at Tucson, Arizona, January 27, 1922, the deposition of **Philip Contzen** was taken on behalf of plaintiff and after being duly sworn, testified as follows:

My name is Philip Contzen; I am 53 years of age; born in Tucson, Arizona. The early part of my life I spent abroad and have lived here in Tucson 30 years, where I now reside, practicing my profession. I was five years old the first time I went
225 abroad. I am a civil engineer and surveyor. I was for many years government surveyor and was also employed in the United States Surveyor General's Office. I have given time in my professional career to locating people upon government lands. I remember when Congress enacted what was known as the enlarged Homestead Act, dated February 19, 1909. Quite a length of time elapsed between the enactment of the Act and the designation of lands which might be located thereunder. Lands to be entered

under the Act have to be designated and approved by the Commissioner of the General Land Office, or Secretary of the Interior before entries are allowed and the government has gone ahead and designated large tracts of land to be entered under the Act. They can be designated at any time. If land is not designated there is a procedure by which it will be designated. They are still designating at different times. There are special cases that come up quite often. In my professional business as locator of claims for entry on public lands I obtained a map that shows the lands that had been designated up a certain time in 1916. from the General Land Office in Washington, and another in Phoenix.

"Q. Is one of these the map which you gave to me and which I have here in my hand? A. Yes.

Q. In what color, if you know, is the land which is designated as open for entry under the enlarged Homestead Act? A. It is printed in red on said map.

Q. This is a map of the State of Arizona? A. Yes.

Mr. Reid: We offer this map in evidence and ask that it be marked Plaintiff's Exhibit "A".

To the introduction of which the defendant objected on the grounds incompetent, irrelevant, and immaterial; objection overruled; exception noted.

(Said map indicated that all the lands described in the plaintiff's bill of complaint, together with other lands are printed in red.)

(Here follows map, Plaintiff's Exhibit A, marked page 226.)

227 I am acquainted with most of the lands in southwestern Arizona, known as the Papago Indian lands.

The Papago lands are shown on that map to be within the territory which has been opened by the government under the enlarged Homestead Act.

To the question which elicited the answer contained in the last sentence defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled; exception noted.

This land as shown must have been withdrawn, as it is now made a reservation. That which is not in the reservation is open for entry provided it is not settled on by an Indian.

I know that the lands outside of the Papago country are open for entry provided they are not settled upon by an Indian. This rule always applied to every homestead entry. They have to state that it is not occupied by an Indian, whether in the reservation or otherwise. If so occupied it cannot be entered. I have been engaged in buying and selling of land and acting as agent. I have handled scrip land and sold new land rights. I am familiar with the value of grazing lands in southwest Arizona, in Pima County. Scrip land, more or less, would be valuable grazing land and these scrip lands were sold by the Santa Fe Pacific Railroad Company for \$2.50 and \$3.00 per acre.

**MAPS
TOO
LARGE
FOR
FILMING**

I am familiar with the lands in the Papago country in Pima county from actual observation and having gone over them. I have been to Santa Rosa and am acquainted with the character of the country in and about there.

From my knowledge of the country and grazing land values in general in Pima County I would say that under the present conditions these lands are worth from \$2.50 to \$3.00 per acre and if placed under irrigation, more.

228 In a small way I have had more or less to do with the Papago people during my long residence in Tucson, buying from them, hiring *hiring* some washwomen and once I had a surveying party composed of Papago Indians. They are peaceable Indians and the younger generations are civilized. They are sedentary, not warlike. For a living they engage in cattle raising principally and some farming, formerly they manufactured a good deal of earthenware and baskets. They lived in villages or rancherias, which were a group of little houses made of the sahuaro sticks and other cactus ribs plastered up with mud. Here and there you saw an adobe house. When I was a small boy I heard about the chief Coon Can (Con Quien) that he was chief of the Papago country. That was general knowledge gathered from the community during my residence here.

"Q. Did you know Jose Maria Ochoa, otherwise known as Con Quien? A. I saw him once."

I knew P. R. Tully by sight. I knew Mr. Andrew Cronley very well. He died about two or three years ago. These men were prominent business men of Tucson. I met Teodora Trojel once—I had some surveying work to do for her and her husband—she explained to me what she wanted—she seemed to be very talkative and bright.

Cross-examination by Mr. Fraser:

The executive order creating the present large Papago Reservation was about 4 or 5 years ago, I should judge. This would withdraw all the lands within the reservation from the operation of the enlarged Homestead Act. Con Quien was recognized as chief of the Papago country. I don't know about individual villages. He was the only chief in that part of the country. I did not know his power. Teodora Trojel lived at San Xavier. I went through there once in a while and was just generally familiar with the place. I did not know her reputation.

Pursuant to the same stipulation hereinbefore described at Casa Grande, Arizona, February 9, 1922, the deposition of **W. T. Day** was taken on behalf of the plaintiff, and after being duly sworn, testified as follows:

229 Direct examination by Mr. Reid:

My name is W. T. Day. I reside in Casa Grande and am 46 years of age. I came to Arizona in the fall of 1885. I first lived at

the old Vekol silver mine, all Papago country; moved from there in 1893 to the Quijotoa. I was there 6 months and went east where I stayed till 1896, where I lived from time to time in and out, although I worked 8 months in 1897 at the Gunsight, also in the Papago country. Now I have lived at Casa Grande, Pinal County, Arizona, since October a year ago, and up to that time I lived at the Quijotoa and was in the mercantile business trading principally with the Papago Indians. I speak their language. With the exception of the two years I was east I lived among the Papago Indians practically all the time since 1885. When I first went into that country most of their houses as a general thing were built of sahuaro or ocatilla, daubed up with mud and dirt, with grass roofs. There were also houses made of brush and grass called wickiups. I have been into Mexico prospecting. In the early days some of the Mexicans lived in houses similar to wickiups especially around their ranches and small places.

"Q. In the early days when you first went into that country do you know the custom of the people relative to there being a head chief, who was superior and over the other chiefs who were chiefs of villages only?" "A. Yes. The Indian tribes had a main chief, then each village had its captain or sub-chief."

"Q. And did you ever meet or know a chief by the name of Con Quien?" "A. I knew of him. I never met him."

230 "Q. Or Jose Maria Ochoa?" "A. Yes, I knew of him."
 "Q. Do you know from what the Indians told you, whether he was in the early days head chief over all the other captains or chiefs?" "A. He governed over all the Indians, from the Santa Rosa villages clear down to the Mexican line and running east and west. That was his jurisdiction."

"Q. Including the Santa Rosa villages?" "A. Yes. The Santa Rosa villages."

"Q. And the Santa Rosa villages extended how far north?" "A. The Santa Rosa district, or villages, well, to the Santa Rosa Mountains. The Indians call it Kabitque."

"Q. And the country over which he had jurisdiction extended how far north?" "A. Whatever part of the country that Santa Rosa claims. They said as far as Table Top Mountain was their territory."

"Q. In the early days?" "A. I don't know. Just recently I got that information."

I remember a visit Mr. Guittard made to the Papago country about 1910. He visited me at Quijotoa.

"Q. Do you know what his mission was——"

Mr. Fraser: "Objected to as hearsay."

(Objection overruled; exception noted.)

"A. He told me that he was looking over the tract in the agreement between Hunter and some Indians. And he was out there, looking up this tract at that time."

"Q. Did you go with Mr. Guittard to the various Indian villages and talk about the matter to the Indians?" "A. No. Not the first

time he came out. I don't remember just the year. I don't think it was in 1910. If I remember right it was in 1915, wasn't it?"

231 "Q. There was a second trip?" "A. Yes, the first trip another man went with him, and the second time he took me along as interpreter."

On the second trip we went to Santa Rosa, Cababi, Comobabi and Silinarki—it means "Hanging Saddle"—and Coyote village and Quijotoa. We went down to other places along the line, San Miguel and a village east of Indian Oasis around the mountain, where there is a big tank, and to Tecolote. I acted as interpreter to talk to the Indians of these various villages. We talked to Jose Maria Ochoa, Juan Capitan, and Jose Pablo, Jose Antonio, Benito, Jose Castro and a number of others. I cannot recall all their names now. When I said Jose Maria Ochoa, I mean Francisco Ochoa, son of the old chief Jose Maria Ochoa. In visiting these villages I attempted to talk to the prominent or leading men of the village. At Hanging Saddle we talked to a fellow by the name of Hasuwa.

"Q. What did you tell this Indian at that time relative to the suit that had been commenced, or was about to be commenced, relative to their land, if anything?" "A. I asked them in the first place if they had any recollection of any transaction between the Papagos and some Americans heretofore concerning this land that belonged to the Papagos. They said they had no recollection of anything of the kind, but that they always understood the land belonged to them. And we went to this man Hasuwa who had a record stick there, and we told him to look up this record stick and see if there was not some transaction of that kind. He stated that in looking over this record stick there was a record there, but that he could not find any record of——"

Mr. Fraser: "That portion of the witness's answer relating to Hasuwa is objected to as hearsay."

232 "A. —that the chief had been called into San Xavier, but he did not know what about."

"Q. Did he know about what date that was?" "A. He didn't know what time of the year, but it was about thirty-five or thirty-six years back. I forget now just the time."

"Q. Did you explain to the Indians with whom you talked at that time the nature of this suit?" "A. Yes."

"Q. What did you tell them about the suit?" "A. I told them that the captains of the villages and a man by the name of Hunter had entered into a contract in which Mr. Hunter told them that he would have the government survey off this land for them and allot it to them, but that Mr. Hunter was to get a portion of the land for his services in compelling the government to survey off the land and allot it to them as they were entitled to have it, as it was theirs."

"Q. Did they ever hear of the contract that was made with Hunter prior to the time that you talked with them in 1914?" "A. They said they had no recollection of any contract, or anything like that, but they did have recollection of some kind of an understanding between some Americans. They did not know who it was. They

didn't know the nature of the contract. They had always understood that the land belonged to them. They said they had been told that the land belonged to them."

"Q. Did anyone say anything about anyone visiting them in 1910 and telling them about the transaction?" "A. No."

"Q. Did you ask any of these men whether they were willing for this suit to go on, or for a suit to be filed for the purpose of determining the title to the land?" "A. Yes. The majority of them were in favor of it at that time."

"Q. Did any of them make any statement about the Superintendent of the Indian Agency urging them to take up allotments of land from the government?"

Mr. Fraser: "Objected to as hearsay."

"A. Yes, sir."

"Q. What did they say about that?" "A. They didn't want to at first. But they came up to my store and asked me about it, and I told them it was all right and to go ahead and take up the allotments, and I talked with them about it and told them it would secure their land to them. That was before Mr. Guittard came in there—in fact I know it was."

"Q. Do you remember whether or not it was customary in the early days for the Papago Indians of the Santa Rosa village and others to rely upon their chiefs or head men to transact their business for them?" "A. Yes, sir. All their business was transacted through their chiefs."

"Q. Were the Indians themselves as a rule able to understand the ordinary affairs of business if it was explained to them in their own language?" "A. Fairly well, yes."

"Q. Do they know the value of money and property?" "A. Yes. Anything they have any dealings with, such as stock and money, they have an idea of the value, yes."

"Q. From whom did you learn that this suit was about to be commenced, if you remember?" "A. A fellow by the name of Brown enlightened us first."

234 I knew Brown. He was at our place a few days. I never met him until he came out there some time before Mr. Guittard came out there the first time about 1910 or 1911. I did not go with Brown anywhere among the Indians. He told some of the Indians to tell the chiefs to come up to the store. He stayed in camp. I was present and acted as interpreter in some conversations he had with the chiefs. He had me call in some of the acting chiefs and ask them if they had any recollection of this transaction. I did, and they said no. Then I went on to explain what it was, and he wanted them, the present acting chiefs, to sign an affidavit of approval, approving the former contract given by the old chief, but none of them would do it, because it was at the time the government suggested their taking up these allotments, and they thought they might interfere or conflict with the allotment papers.

To the question which elicited the answer contained in the last

sentence defendant objected; ground, hearsay; objection overruled; exception noted.

I think there were only two chiefs who came to talk with Brown. I believe Alvino, at that time of Cababi, was one and Ramon Diaz, at that time chief of Santa Rosa. I don't know whether he was chief of all the Santa Rosa villages or not. He was of part of the Santa Rosa tract and Covered Wells.

Mr. Guittard was in that country, I think close to a year at one time. He made his headquarters there on our place at Quijotou. Once in a while we would talk to the Indians when they would come in from the Santa Rosa country. He could not talk to them in their language. I acted as interpreter in talking to them. He would tell them about this case being brought against the Government for the purpose of clearing up the title to the land. At that time they raised no objection at all to it. I was in the country when Mr. Guittard visited there in 1920, and went with him to the villages of Vinumkirk and to Santa Rosa. I am not positive but I think it was Jose Pablo or Juan Pablo, a big heavy set Indian, I think
235 he was chief of Santa Rosa at that time, I don't remember him very well. He had known about the existence of this suit at that time.

"Q. What did he say relative to it, if anything?"

Mr. Fraser: "Objected to as hearsay." "A. I asked him some questions, and he didn't want to say anything, but I asked him why he didn't want to say anything, and he said 'Because Hugh Norris had told him not to talk or say anything'."

"Q. Who was Hugh Norris?" "A. He was chief of Police of the Indians."

"Q. So you were not able to get into conversation with him about this matter?" "A. No, we could get nothing out of him at all."

Mr. Fraser: "Objected to and ask that the two previous questions and answers be stricken as incompetent, immaterial and irrelevant."

"Q. What was the attitude of this man with whom you attempted to talk as seeming to be afraid to talk or not desiring to talk?"

To the last question defendant objected; ground, incompetent, irrelevant and immaterial; sustained; exception noted; the deposition of witness shows that he answers as follows: "He just simply refused to talk. He was working out in the field and we waited until he got through and he wanted to know what we wanted, and we told him and talked to him about this case and tried to explain it, and he said, 'What do you want to talk about?' and we told him, and he said he could not say anything about it as he had been instructed by Hugh Norris not to talk to any one about it."

I had a conversation with an Indian named Antonio Lopez concerning the land belonging to the Indians and concerning an affidavit he signed shortly before we saw him. He stated the affidavit was presented to him by some representative of the Government.
236 I don't remember just exactly now why he signed it. He

told us if I remember correctly that Hugh Norris told him he had better sign it.

To the question which elicited the answer contained in the last sentence, defendant objected; grounds, hearsay; overruled; exception noted.

On the 1920 visit Mr. Guittard asked the Indians, but they would not make affidavits. They would not talk or have anything to do with us. They said because they had been instructed by Hugh Norris not to talk and we could not get any information out of any of them.

To the question which elicited the answer contained in the last sentence, defendant objected; ground, hearsay; overruled; exception noted.

I don't know what influence the Indian police would have unless it would be fear of the law.

"Q. Do you know whether or not they usually obey the Indian police?"

To which question defendant objected; ground, opinion, evidence and incompetent, immaterial and irrelevant.

"A. Yes, sir. They obey the law."

"Q. When you speak of the law, do you mean the white man's law or the Indian law?" A. Either one."

"Q. Is not what the Indian Agents say to these Indians what they consider the law?" "A. Yes, I think so. The Indian Agent's word is law with them. They obey his instructions more than they would obey the Indian police."

To last question defendant objected; ground, hearsay; overruled; exception noted.

I know where a mountain called Kabitque or Santa Rosa Mountain is. I would say it is about east of Santa Rosa, probably a little north-east, about 8 miles.

237 "Q. Do you know, or has anyone ever told you of a place -alled or known as Unkamo?" "A. Oxomo, you mean."

"Q. Yes." "A. Yes. That is a place northeast of Cababi."

"Q. You say Ukamo?" How do you think that is spelled? "A. Oximo—I would judge."

There are just 2 or 3 houses at the foot of the mountains east of Cababi village. It is not the mountain, it is just the village called Oximo.

"Q. Do you know of a place called Mescalero in the Santa Rosa region?" "A. No, sir. There is no place there now known by that name, but one old fellow told me that there was a place where they used to roast mescal roots, and it might have been named for that and I would judge that was four or five miles southwest of Brownell."

To the last question the defendant objected; ground, hearsay; sustained; exception noted.

I know a mountain called Table Top Mountain. Its Spanish name is Cabezon. Cabezon is a term that is equivalent to or synonymous with Sierra Cabeza."

The point that I mentioned and stated mescal roots were roasted is near Sierra Blanca. It is between Sierra Blanca and Covered Wells range. I don't know of the word Oximo having any meaning in the Papago language. I saw the record stick referred to at Hanging Saddle. It was a stick about five feet long made out of a sahuaro rib, and there were straight lines across, indicating the years, and notches between them to signify something that had happened during the year. Hasuwa told me that.

Between 1911 and 1915 at various times I acted as interpreter for Mr. Guittard in his conversations with the Papago Indians, especially of the Santa Rosa Indians.

Cross-examination by Mr. Fraser:

I was ten years old when I came to Arizona, and know nothing personally about what happened here in 1880. When I speak of Santa Rosa, I mean it includes all the little villages in the Santa Rosa valley. They are called Santa Rosa villages. I don't know whether I can name them or not. I will try—There is Akchin—Archi and Cueva (Spanish way of spelling it) and Anegam. Those I believe are the principal villages. Four of them. They lie some distance apart. From the farthest north to the farthest south of these villages is about 8 or 10 miles. The greatest distance east and west in any of these villages between the villages west and the villages east, I would say about 5 or 6 miles in air line. I never went straight across. I would judge the valley was longer than 40 miles from north to south. It would be in the neighborhood of 100 miles long and about 12 or 15 miles broad. When the Papagos are talking among themselves they use the papago name of these different villages. They very seldom use the term Santa Rosa. Of course they say they are going to Santa Rosa, and if you want to know to which village he is going you have to ask him the name of that village. Each village has its own name. I don't consider that one of these villages is called Santa Rosa. It is all called Santa Rosa. There is a district called Santa Rosa, and each district has its own name. All of these villages are just the ordinary Indian village, with houses laid out anyway, widely scattered, and no streets. The same village could consist of several groups of houses with quite a distance between them. Sometimes with cultivated fields or desert between the groups. Not very long ago the practice of building adobe brick houses came in among the Papagos, about 15 years ago since it became general. Of course, there were a few adobe houses farther back than that.

239 "Q. You spoke of Papagos as having head chiefs and captains. Do you know of your own knowledge that all the Papagos in your day recognized any one man as their head chief?"

"A. Yes, sir."

"Q. How do you know that?" "A. Well, from actual communication with the Indians."

240 "Q. Do you not know that sometimes some of the Indians disputed the authority of any head chief?" "A. I never knew that. No."

"Q. Or that some of them still do that?" "A. Some have one head chief. Each village has its chief and they look to him for instructions, but the main chief had authority over all of them."

"Q. How long since did they cease to have a main chief?" "A. Quite a few years ago. They have not had a chief with the same authority that Jose Maria Ochoa had since he died."

"Q. About how long ago was that?" "A. Jose Maria Ochoa died several years ago. I could not say."

"Q. Was the head chief ever formally elected, or was he just a man of strength of character who really forced himself into prominence?" "A. I don't really know that. I don't know how he became chief or whether he was called by council. The chiefs call the council together and they have a regular meeting and talk things over, and whatever they decide on the chief carries out."

"Q. During the time you have known the Papagos the different villages have had chiefs and councils have they not?" "A. Yes, sir."

"Q. And whenever they had something of importance to all the villages the chief would call the council together and deliberate?" "A. Yes, sir."

I don't think the chief ever called all the inhabitants of the village in an important matter, but of course they were all more or less invited and were consulted, but in the early days the government of the villages was entirely left to the council and the chief. I would not say absolutely that the chief did not call a meeting of all the male inhabitants. The chief would not do anything of importance without calling the council.

If he tried to handle any difficult question without calling the council together that would not be legal.

241 "Q. Is it not true that in the old days there were factions in some of the villages who denied the authority of one chief and adhered to some one else?" "A. Yes, that is very true. In the early days some of the villages would not associate with other villages. It is different now, of course."

"Q. But in the early days there was some conflict of authority?" "A. Yes."

"Q. You spoke of Con Quien, or Jose Maria Ochoa as being head chief. Would you say positively that he was recognized as such by all the Papagos and that none of the villages disputed his authority?" "A. I got my information from the Indians themselves, that he was head chief and was recognized by all the chiefs of the Papago tribe."

"Q. Were not those Indians who told you about this those who lived near Con Quien's own home probably?" "A. Well, he was then living in the valley. Con Quien's home when I was a young

fellow was not at Vinumkirk, or Cababi, but his ranch was between the two places."

"A. Did he live at Quijotoa?" "A. Yes, after it was discovered, but he lived in the valley eight or nine miles east of that."

"Q. Is it not true that in the old days, or even nowadays, no Papago village has any definite boundaries?" "A. They claim boundaries, but in the early days they did more so than now. That is what caused ill feeling sometimes between on village and another."

"Q. Do their cattle range where they will?" "A. Yes, sir. They don't draw any lines now at all."

There was never any attempt made to segregate the cattle of the different villages. Each cattle man had his own cowboys
242 to herd his cattle within the boundaries of what he called his range. Of course, it belonged to the village in which he lived. I have heard of a village claiming definite boundaries between it and another village. The Coyote village described their boundary to me when we were over there with Mr. Guittard. Santa Rosa set their boundary over to Table Top Mountain but they don't know the other boundaries. I don't know the fellow's name who told me that. I think one was Ramon Diaz. He said the boundary ran there but he did not know where it went south. My information as to that comes from only this one man at Santa Rosa, and the Coyote boundary came from a Jose Luis, I think. I don't remember exactly. This Ramon did not claim to entirely know the boundaries of Santa Rosa in any other direction.

"Q. You said that you spoke Papago, Mr. Day. Did you learn it in the course of trade with the Papagos?" "A. Yes, sir."

"Q. Have you ever made a definite study of the language?" "A. As near as I could while I was out there. I, at one time, made up a dictionary written in the Papago language."

"Q. A dictionary you made yourself?" "A. Yes."

"Q. If you ever spoke to the Papagos about legal matters you had to make your language very simple and elementary, did you not?" "A. Yes. There is no way to describe all the technical terms. They don't know anything about them. You have to describe the case as simply as you can. If you want to say that the government is bringing a suit, or is being sued, or anything like that, they have no words to that effect."

"Q. You could not discuss with them the terms fee simple title and occupancy or possession?" "A. No. They would not understand that part."

243 "Q. Who is this Mr. Guittard of whom you have been speaking?" "A. Mr. Guittard was a representative of Col. Hunter.

"Q. Robt. F. Hunter?" "A. Yes.

It was Mr. C. B. Guittard. After Col. Hunter died he continued to be interested in this Papago Land controversy. He was their representative but through another representative, I understand. The other party was R. M. Martin. Mr. Guittard frequently visited my store known as Day's Store at Quijotoa and brought people with him to interest — in the Papago land proposition, I suppose.

To the question which elicited the answer contained in the last sentence, plaintiff objected; grounds, incompetent, immaterial, and irrelevant; overruled; exception noted.

I don't know any of the people he brought with him. I furnished them transportation at one time. They are no more friends of mine than anyone else. They came here because it was the only place they could stay. Mr. Brown came first and stayed about a week and decided he could not get the information he wanted and went back, and later on Mr. Guittard came out. We have become friendly. I would not like to particularly help them in this suit. I am a neutral as far as that is concerned. I have no personal interest whatever, present or prospective, in the result of this litigation. I first heard of it in 1910 when Brown first came out. I don't know Brown's initials. I think he was from Nashville, Tennessee.

"Q. When did you first hear that a suit was instituted or proposed in this same connection?" "A. Mr. Brown told me. He was an attorney and was investigating the case and preparing to bring suit."

"Q. But no Papago had ever told you anything about this up to that time?" "A. No. Not up to that time."

244 "Q. When you discussed this matter with the Papagos it was you who broached the subject to them and not they who broached the matter to you, was it not?" "A. Yes, sir. I simply told them what these people claimed. That is all I had to say."

"Q. I suppose these people asked you to tell the Indians that they proposed to bring a suit which if successful would give the Papagos full control of their land free from government interference or something of the sort?" "A. The way we explained it to them was this; at the present time they had no land that they could dispose of or sell and although they had been allotted land by the government it was theirs to use as long as they wanted it, but they could not dispose of it, but in the other event it was their land to do with as they saw fit."

"Q. What did you tell them about the interest that Hunter had acquired or was supposed to have acquired?" "A. I told them that their contract with the former chief was that they were to acquire title from the government, and that they were to get half of the land for their legal fight with the government."

"Q. Is your memory clear that you mentioned one half?" "A. Yes, sir."

"Q. Did you tell them that the Martin and Hunter interests had already been selling interests in the Papago lands?" "A. No."

The Papagos are very much attached to their lands. Some of those to whom I spoke disapproved of the proposed plan and some were in favor of it at the first approach.

"Q. Had they any knowledge of the power of attorney supposed to have been given to Hunter to empower him to bring this suit?"

245 "A. One Indian at Santa Rosa claimed to have the power of attorney himself but I believe it turned out to be some advertisement or other."

"Q. It was an advertisement of overalls, was it not?" "A. I believe it was."

Mr. Kleindienst:

"Q. Do you know of your own knowledge? A. That is what I have heard."

I said the record stick of Hasuwa showed a meeting of Indians at San Xavier.

"Q. Is it not true that from time to time in the early days chiefs were called to San Xavier or Tucson, to interview the Indian Agent or some government representative? A. Well, I don't know. They occasionally went in, whenever the Bishop of the Church called them in. The Bishop at that time had more influence over the Indians than the government had."

"Q. Of what date are you speaking when you say the Bishop had influence? When do you mean? A. They had a record showing that these Indians were called in by the Chief at that time, but they had no record showing why."

When I said the Bishop had this influence over them I referred to no particular years. I know nothing about 1880. I meant that they were Catholic and the Church had more influence than the agents.

Since I came to know the Papagos it is true that from time to time various chiefs had gone to Tucson or San Xavier on various matters of business. The Indians understood ordinary business only in an elementary way. When at my store, an Indian making a purchase would always purchase one thing, pay and receive it; then purchase, receive and pay for another and so on in the same manner. This practice does not happen as much now as it did. At the times I testified that the Indians came to my store and I told them about this case and they made no objection at all then. They were in

favor of it at that time because we explained to them, that
246 if they had title to the ground they could dispose of it, sell it, or do as they pleased with it. They said that they always understood that they owned the ground. In fact they were all in favor that we went to the first time we went around. I would say 8—9—or 10 of the chiefs around the different villages. No councils were called in our presence to give approval.

"Q. This was just the individuals; a few of the men you talked with? A. Yes. Just a few of the chiefs."

When there was a faction in the village I suppose the Chief's word would be law with his village. The law of the village is pretty strict and upheld by the majority. I know of one instance of — dispute at Picinimo. I never heard of Kabitque, around Santa Rosa tract, until I heard it from the Hunter people, but it is the same thing as Kavichk. This Santa Rosa Mountain is not a range. It is a large hill about 6 miles long. Okomo, which I called Oximo, is a little village at the base of a mountain. I never heard of it until we went to inquire where Okomo was and no one knew but they said they knew where Oximo was and we concluded it was the

same place. I don't know how long this village had existed. I don't know the Papago name for the North Comobabi range. I don't recall just the name but some one over at Santa Rosa pointed out Mescalero to me and said that some old fellow said that they used to make mescal out there, but no one ever heard of it. The Indian told me that he knew they used to pick mescal over there and we assumed that it was called Mescalero for that reason. I do not identify the spot. It was years ago they used to pick it over there between Covered Wells range and Poso Blanco. White Mountain and Poso Blanco are the same. White Mountain is a range itself. I did not know of my own knowledge the reason the Indians were unwilling to talk about the Papago lands. The only reason I know was that they told me they were forbidden to talk. I testified to the effect that Antonio Lopez intimated that he had signed affidavits because the chief of police told him to. He did not
 247 say that the statements in the affidavit were not true. He said nothing about it."

Redirect examination by Mr. Reid:

In mentioning the villages of Santa Rosa, I did not mention Kiacheemuck. Cueva and Kiacheemuck are not the same. There is a village there also. I think that is the first village. Con Quien died 20 years or more ago. In the early days some of the villages were more or less unfriendly but they associated. They would have an understanding as to the dividing line between their villages as to fields and grazing land both. The right to their fields exists yet but in recent years there has been no distinction in the grazing land. The only way I can describe the way the village of Coyote described its boundaries, is that the Indians told me that the starting point was at a spring up on top of a mountain. I compared the description to that in the deed. It was very similar, in fact the starting point and two or three others were practically the same. The laying out of the villages of the Indians in Mexico is very similar to the early villages of the Papago people. My understanding is that no chief would transact any important business without the consent of the council. After Mr. Brown left I did not hear the Indians discuss the matter. In the early days the Mexican people transacted their business in very much the same way as the Indians.

To the question which elicited the answer contained in the last sentence defendant objected; grounds, incompetent, irrelevant, and immaterial; sustained; exception noted.

If the Mexican was uneducated there is no difference between the Indian and the Mexican in the rural villages in the transaction of business.

I spoke to quite a few people other than the eight or nine chiefs relative to this suit and the Hunter matter. The trouble at Picinimo that divided the village was: A man who had quite a few head of cattle left his wife and married another woman. So the
 248 chief of that village took all the cattle away from him and gave them to his first wife. That made the old man mad and

he made an awful roar, but it didn't do him any good. The man who got the worst of it resented the chief's action. It did not cause any faction in the village."

Cross-examination — Mr. Fraser:

It was when the villages were not friendly that they had to watch over their cattle by means of herders. There were not many of these occurrences. The distance the cultivated fields extend from the village depends upon the topography of the country. They must locate their fields when there is flood water. Sometimes they build their houses first and locate their fields farther away. Not very often more than a mile or a mile and a half distance. The Papago villages such as Santa Rosa are not like the organized Mexican pueblo but in the little farming settlements the laying out of the town and the living conditions are about the same. I refer to the haciendas in Mexico. An ordinary Mexican pueblo has regular streets and a plaza. I compare the Papagos from — standpoint of education with the ordinary Mexican peon. A peon is rather a slave, he may be an Indian, Mexican or a white man. If he is not educated, one term is about the same as the other. I never made any particular study of the Papagos. My testimony is just what I have noticed and from talks with the Indians themselves.

Pursuant to same stipulation hereinbefore described, at Casa Grande, Arizona, on the 28th day of July, 1922, the deposition of **Ed. McMullen** was taken on behalf of plaintiff, after being sworn by a duly authorized notary public testified as follows:

Examination by Mr. Kleindienst:

My name is Ed. McMullen. I am a farmer, 50 years old and was born near Phoenix, Arizona. In my early life I was a farm and ranch hand. As such I have been to the Altar district of Mexico several times getting cattle. I drove them to Phoenix, coming 249 through Santa Rosa, down below Maricopa Junction. We had no trouble getting through the Papago country with the cattle. We were stopped several times by some of the Indians who held us up and wanted us to donate to them. We would give them something to eat once and a while and never had any trouble with them. We used their water and the cattle grazed on their lands and therefore they wanted some pay for it.

It has been 25 years since I was down there but I remember it was between 8 and 15 miles south before arriving at Santa Rosa itself that we were stopped. The method used to stop us was that 3, 4, or 5 of them would come out on their ponies and stop us. I was a hand,— they would have our foreman go to the chief and pay them for the water and grazing. From that village the chief usually sent Indians north with us. The Indians would come with us 25 or 35 miles but they would be different Indians. We were also stopped at the place called Santa Rosa by white people.

Q. Now, when you would stop at the place before arriving at Santa Rosa, did you have any way of knowing when you were leaving the grazing territory of that village and going into the grazing ground of Santa Rosa? A. Well, do you mean any land mark or anything of that nature?

Q. Yes. A. When we left that town we got to the divide, and after we left the divide we did business with the Santa Rosa Indians?

Cross-examination by Mr. Fraser:

The first of these trips I made in the year of '89 or '90. The last time in '92 or '93—I think I made four trips in all. I think the smallest herd we brought through was about 53 head,—and the largest about 120 head.

Q. Now, is this a correct statement of the situation you have described, namely,—that your herds did some grazing as they
250 passed through the Indian land and were watered at the Indian ponds and that the Indians asked some money for grazing and water? A. Yes, sir.

Q. Sometimes a herd of the size you mentioned would drink one of the Indian's ponds dry would it not? A. Yes, sir. And wouldn't have enough to go around.

We would be stopped on any one trip between the Mexican line and the point where we left the Papago country—three times before we got to the divide and twice after to the best of my recollection.

Q. You have mentioned stopping at that place from 8 to 15 miles south of Santa Rosa. Was there an Indian village there? A. No, sir. There was none immediately there.

Q. Do you know whether the Indians passed word from one place to another that you were coming? A. I would judge that they did but I don't know.

There was not a pond right at Santa Rosa but I think it was about a mile or so away. Of my own knowledge, I do not know where the Indians who stopped us came from, but they came from the direction of Santa Rosa, or a northerly direction. The ponds I refer to are the ones the Indians collect water for cattle and domestic use. There were three or four ponds at the village of Santa Rosa. I don't remember exactly. Some of the Indians who accompanied us from place to place got something to eat from our outfit.

Q. Is it not correct that that was one of their chief reasons for accompanying you? A. That and what we paid them and their chief sent them along.

Q. Do you speak Papago? A. No. Spanish only.

Q. Did you hear the chief ordering them to accompany you? A. Yes, we all spoke Spanish and the chief ordered them in
251 Spanish in our presence. They did not speak good Spanish.

Q. What did the chief tell them to do? A. Well, he just told them to go with us and help us along for a certain distance and then we would meet another bunch.

Q. The chief did not tell them how far to go, did he? A. No, sir, or if he did, I didn't understand it.

We could see no artificial boundaries marking the territory of Santa Rosa from the north or south of it. At that time there were three or four Indian villages not far apart in the vicinity commonly spoken of as Santa Rosa. As these Indians came to meet us south of the divide from the direction of Santa Rosa I do not know which of these villages they came from.

Redirect examination by Mr. Kleindienst:

With the exception of the times I have been away temporarily, I have lived in this vicinity all my life. I think I am acquainted with the people who inhabit this part of the country. Basing my answer upon my knowledge gained from this residence and from my business as a cow hand and rancher I think the Indians at Santa Rosa from their actions indicated to me that they claimed ownership of a definite tract of land north of the divide to which I have just referred.

Pursuant to the first stipulation herein referred to, the deposition of **Placido Trejo** was taken at Tucson, Arizona, on the 16th day of February, 1922, on behalf of plaintiff. Same attorneys present. Said deposition was introduced and contained evidence as follows:

Direct examination by Mr. Reid:

My name is Placido Trejo, I was born in Los Angeles, California. Am of the Spanish race. I have lived my life since I was nine years old around San Xavier and Corales which is between San Xavier and Tucson. I am 68 years old. I lived at San Xavier until they ran me out of there. I came to Corales, which is a mile and a half
252 or two from there. I know very little Papago, one or two words. I knew Teodora Trojel ten or fifteen years very well. She spoke Papago very well, because I heard her talk to them. I had been to visit at her house. I know her reputation at San Xavier community where she resided for truth and veracity. It was good at the time I knew her. I knew an Indian by the name of Con Quien. I have seen him in some of the reunions they had around there but I never had anything to do with him. I have been at San Xavier when he came to that place with captains of the Papago villages. Everybody knew that he was captain because the other ones said he was captain. I have seen Con Quien with the other men that he brought with him gathered together but I don't know what they were saying. They would form a circle with Con Quien in the middle and would be smoking.

Cross-examination by Mr. Fraser:

My parents were Mexicans. When I first came to San Xavier I lived there about 15 years. I came to Corales when they burned me out. The Papagos ran me out of there. I feel friendly to some Papagos and to some I don't. They burned the houses and ran them all out, not only me, because they did not want us to live there with them—I didn't like it but I didn't say anything because I was where

I didn't belong. I was on somebody's property. As long as I lived there I went to visit Teodora. She was there when I came. I think she left when they all left. When I left there she was about 45 years old.

Q. Tell me again why you think she spoke Papago? A. Because I heard her talking conversation with them.

Q. You don't speak Papago yourself? A. No, one or two words. I just think it is a word, I don't know it.

Q. You don't know what she was saying when she was talking Papago to you? A. Once in a while I knew a word that they said.

Q. But you say you are not sure of the one or two words that you thought you knew yourself? A. I did, because I used to hear them talk and whatever she said they done. That is what made me think they were words.

Q. She might have been using any sort of gibberish or noansense, and you would not know whether she was talking Papago or not? A. I did, because I heard them talking and I had suspicion what they said all the time.

Q. So you suspected merely that she spoke Papago? A. Yes. I was suspicious because I always seen her have business with them and bossing them around there.

Q. If the Papagos themselves said that she could not talk Papago, would you still say that she could? A. Yes, because as long as I seen her talking with them I would think that she talked Papago.

Teodora was afraid of my step-mother and other older members of my family. I never talked to anybody but I heard that she had a good reputation. I never had a cause to talk about her reputation. You know well that if they have a bad reputation you soon know it. From all the neighbors, mostly Mexicans, I heard she had a good reputation. I never heard what the Papagos thought of her.

As long as I was there I saw Con Quien two or three times. Some of the other Papagos were chiefs. I knew because I played with some of the chiefs when they and I were boys together at San Xavier. I knew they were chiefs because I heard them say — amongst them. I heard Suarez say that they were chiefs. I am a American citizen. I know Maria M. de Berger very well. So far as I know she is a good woman. She and Teodora were more enemies than friends.

254 Pursuant to the first stipulation herein referred to, the deposition of **Nestor Martinez** was duly taken through an interpreter at Tucson, Arizona, on the 16th day of February, 1922 on behalf of plaintiff, which was introduced and contained evidence as follows.

Direct examination by Mr. Reid:

My name is Nestor Martinez. I live in Tucson. I am 62 years old and speak only Spanish. When I was small I understood Papago because I was amongst them but I have forgotten what I knew. I am a citizen of the United States, born at San Xavier, where I lived

until I was run out about 40 years ago by the Indian government. I was about 19 when I was compelled to leave there. I knew Teodora Trojel well for a good many years. I knew her reputation in the community for truth and veracity. At the time she was there it was good. After that I don't know. During the time I lived at San Xavier I became acquainted with a Papago Indian by the name of Con Quien. The Papagos looked upon him like a captain of all of them.

Cross-examination by Mr. Fraser:

For about 20 or 25 years I knew Teodora. I was 12 or 13 when I first knew her. I saw her often but she was not a friend of my family. I saw her at her home. She took care of the temple there—cleaned it up. I could not say how long she was away. Sometimes I went to her house twice a day. She was kind to me when I was a little boy. She was too old for me to play with. I respected her. All the people I talked to about her were Mexicans. All the Papagos who lived in that vicinity looked upon Con Quien as head chief. Ascension Rios was head chief afterwards in San Xavier. I think that Con Quien was chief of all the Indians around there. First was Francisco Rios, then Ascension Rios, the second one. It has been so long I don't remember if it was at the same time Con Quien was chief.

255 "Q. Did you ever talk to any Papagos about whether Con Quien was ever head chief or not? A. Yes. When I used to go up and look for my horses."

"Q. Where did you look for your horses? A. I bought some horses from him here in town, and they used to go to the villages."

"Q. What villages? A. Cababi and Santa Rosa and Picacho and San Elias."

"Q. Did you ever inquire into the question as to what village Con Quien was chief of? A. Yes, sir. I asked for permission first because they would not let me go in."

"Q. They would not let you go in because you were a Mexican, I suppose? A. Yes, sir."

"Q. From whom did you get permission? A. From Con Quien, I asked permission."

"Q. From that you came to the conclusion that he was head chief of all these places, did you? A. Because they said he was chief at all the places where I went, they used to send me to him."

"Q. Who was it told you that? A. The Indians who were around in the villages."

I spoke to them in Spanish, there were a lot who understood Spanish a little.

Examination by Mr. Reid:

In speaking of the temple I mean the Mission at San Xavier. She was employed by the priest. She could speak Spanish and Papago. I did not know her father. Mrs. Berger who lived out

there in the early days is my half-sister. Mrs. Berger and Teodora were not friends.

Examination by Mr. Fraser:

256 I know that she was half Spanish and half Papago because everybody knew that and everybody said that she was. I did not know her father. Her mother was a Mexican. I have heard her speaking Papago to the little Indians there. They understood because they answered her. I do not speak Papago.

Examination by Mr. Reid:

During the time that I lived there I ate amongst them, went with them and played with them. When they talked I understood a few words because I never liked to talk Papago, but in that time I did know a few words.

Pursuant to the first stipulation herein referred to, the deposition of **Geronimo Herrera** was duly taken through an interpreter at Tucson, Arizona, on the 16th day of February, 1922, on behalf of the plaintiff, which was introduced and contained evidence as follows.

Direct examination by Mr. Reid:

"My name is Geronimo Herrera. I reside here in Tucson. I am 85 years old. When I was small I lived at San Xavier, ten years. I was living in Tucson when the railroad came. I lived and knew Teodora Trojel at San Xavier before the railroad came to Tucson. When I first knew her I was 15 years and she was about 8. I knew her father. He was a Papago named Chico Tijeras. I knew Con Quien. I knew he was captain and bossed all the Papagos. I knew the children in the family of Teodora when she was a child. The oldest was Rafaela, a boy, Jose Maria was next, then Teodora and the youngest was Alearia. Three girls and a boy. The mother's name was Selma. She was no relation but we called her Aunt."

Cross-examination by Mr. Fraser:

"Teodora's mother was only married once. I only saw her with one husband, Chico Tijeras, who was married to her. I knew her in San Xavier where she got married. I don't know if she was a widow with children when she came to San Xavier, but I think they were the children of Chico because I knew them all there and
257 worked with them. All were born when I first came."

"Con Quien said himself that he was head man of all the Papagos, and all the Papagos around there told me. They could talk Spanish pretty well. These were those at San Xavier. I never talked to any others about Con Quien."

Pursuant to the first stipulation herein referred to, the deposition of **Fabian Aguirre** was duly taken through an interpreter at Tucson,

Arizona, on the 16th day of February, 1922, which was introduced and contained evidence as follows.

Direct examination by Mr. Reid:

Fabian Aguirre is my name. I live in Tucson, and was born and raised at San Xavier. I have spent my life at San Xavier, and Tucson and know no other place. Teodora Trojel was my aunt. I knew her well. Her father was a Papago and her mother Mexican. Teodora spoke the Papago and Spanish language. I just knew Con Quien by sight, never met him but saw him about 3 times. When I saw him he was in the middle of a ring where they were having a round-up of men. When the Papagos get together they form a ring. He was the head man because he was the only one who spoke. No one ever told that he was head man. I have never been out in the Papago country, never out of Tucson or San Xavier.

Cross-examination by Mr. Fraser:

I am 54 years old. I went to live at San Xavier when I was young and lived there more than 20 years. I was living in Tucson in 1880. Teodora was my grown aunt when I first remember her. She was the sister of my father. Her father was not living when I first knew her. All I know as to who her father was is what I have heard. I don't know if her mother was married more than once. She spoke Papago, because I heard her talk it lots of times. I don't know Papago and didn't understand what she was saying. Quite a few of the Indians at San Xavier spoke Spanish. When Teodora was talking no part of the conversation was Spanish. It was all Papago.

258 (There is no page 70; mistake made in numbering pages; this for printer's information.)

259 "Q. You don't know whether Teodora, if she knew Papago, knew much or little of it, do you? A. I think she spoke a little, not much, but a little."

All I know about Con Quien is that I saw him there 3 times standing in a ring talking to people. It was he because the Papagos who talked Spanish told me so. I never talked to Papagos about him. I stayed each of the three times from beginning to end until everything was over. I did not understand but went to listen because they were all at a round-up. They invited us to hear. All day they stood there. Con Quien spoke all day. No one else spoke. He would go out and come back. The only meetings I was at *at* were these three. The meeting started at the time the sun rose and lasted all day until sunset and Con Quien spoke all the time. They all would listen and he would do all the talking. The others would ask nothing. They would go out for dinner and come back. My relatives and the people at San Xavier knew very well that Teodora was half Papago. At these meetings they would rest and smoke and lay around and come up and talk again.

Pursuant to the first stipulation herein referred to, the deposition of Chiago was duly taken on behalf of defendant at Santa Rosa School house, February 10, 1922, through Hugh Norris, acting as interpreter, which deposition was introduced by the plaintiff and contained evidence as follows.

Direct examination by Mr. Fraser:

Chiago is my name. I live at Anegam. I don't know my age, but remember when the railroad came to Tucson. I was a grown, married man then but had no children. I was born and raised right there at Anegam. I had a field there. According to early Papago custom the fields belong to the whole family. I never heard of a Papago selling his land. The villages never had any boundaries or lines. When the railroad came to Tucson, Jose Luis was 260 chief at the one village of Anegam. I heard about Con Quien, he was also a chief at his own village. They had chiefs at the villages. He lived at Quitac. In old days, if anything important came up the chief would call a meeting to talk it over. I sometimes attended and listened, but never spoke there. I never heard of a meeting called to consider whether Luis should sell the land around Anegam, about the time the railroad came to Tucson.

"Q. They say now that in that year Luis and a number of other chiefs went to Tucson and sold to a white man called Hunter one half of a large piece of land around here. Did you ever hear of that? A. I never heard anything about it. I never heard of it."

"Q. They say that at the same time Luis gave a white man a paper that gave him a right to go into the white man's court and bring a suit about all the land around here. Did you ever hear of that? A. No, I never heard anything a'out it."

There was never any council meeting that I ever heard of, to consider anything of the kind. According to Papago custom, if Luis had wanted to sell some of the land around Anegam, he would not have done so without calling the people together. He could not sell any part alone. If he had called a meeting I would have heard about it. In those old days, houses at Anegam were made mostly of grass, sometimes made of limbs of trees, they began to build adobe houses recently. Papagos didn't have any live stock years ago. At Anegam they had mighty few, just recently they have cattle and horses.

In those old days some people at Anegam might have had one pony, now they have many. Some of the families then had no cattle at all but now they have cattle. I am a full blood Papago Indian.

261 Cross-examination by Mr. Reid:

I was sitting here and heard the testimony of Jose Ignacio the witness who just preceded me. The Papago people claim to own all the land as far north as Mouch-mo, and down to the Mexican border. All that land belongs to all of them. I never took any part as a

member of the council or assistant captain or chief in the affairs of my village.

Examination by Mr. Fraser:

In the old days the Papagos sometime spoke of Kaicheemuck as Santa Rosa—sometimes they would say Santa Rosa when speaking among themselves.

"Q. Which village did they mean by that? A. All these little villages around here."

"Q. If you were speaking to a Papago from Tecolote in those days and he asked you what village you lived in what would you tell him? A. I would say Santa Rosa."

I live in Anegam now and there when the railroad came to Tucson. If the man from Tecolote wanted to know where I lived, I would tell him my home.

Pursuant to the first stipulation herein referred to the deposition of **Jose Pablo** was duly taken on behalf of defendants (introduced by plaintiff) through Hugh Norris, Papago interpreter at Sily-narki, February 14, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Pablo is my name; I live here sometimes and sometimes at Achi. I am a full blood Papago Indian, 55 years old. I was a grown man when the railroad came to Tucson. I was once a chief at Achi; I am now Keeper of the Smoke. Luis was chief at Achi when the railroad came. At the time Nanakimald was chief at Kiacheemuck. At the same time Hudunyik-shon was chief at Anegam—each one was chief of his own village alone. Luis, who was chief at Achi, was my uncle—he is dead 40 years now.

262 I know Con Quien—he was chief at Vinumkirk. I don't believe he was head chief of any other village—he was not head chief of all the Papagos. I never heard of Luis, Con Quien and the other chiefs meeting at Tucson to give a white man named Hunter, papers to sell part of the Papago lands around Achi and Kiacheemuck or to give Hunter the right to go into the white man's court and bring a suit about these lands. In those days the chiefs did not act by themselves. They would call the people together and talk about it. I never heard of any meeting called in those days at Achi or in any of the villages nearby to discuss selling the Papago lands or bringing this suit in the white man's court. I was living at Achi when the railway came through. I never seen Luis, my uncle; I have never heard him say anything about a meeting with other chiefs at Tucson. I have heard about it just recently from somebody; there is much talk about it at Achi but nobody seems to know anything about it. I never heard of anybody who knew anything about these happenings at Tucson. In the early days Papagos would never use the term Santa Rosa—they would call it in Indian "Achi." If talking to other people they would say Achi. I have a field in Achi. According to Papago custom the

chief and council would not have power to sell my fields—they would *not do that*. I never heard of a Papago selling his land. No Papago village that I know of has any boundary lines between its land and the land of any other village. Cattle roam where they please—this was all true in the old days—then the Papagos had very few horses and cattle. They lived in houses of grass. In those days each chief had a council to help and advise him.

“Q. Did he ever call a meeting of the whole village if an important thing came up? A. They would get together.”

The meetings did not happen at regular times. They would get together any time—then there were a few Papagos at Achi who spoke Spanish—none of them talked English.

263 Cross-examination by Mr. Reid:

There was never a meeting at San Xavier or Tucson about the time the railroad came. I never heard of any meeting with Cun Quien and the other chiefs, either before or at the time the railroad came. If there had been a meeting of such importance I would have heard about it, but I never heard about any such thing. In all my life I never heard of a meeting of the chiefs of the Papago country at Tucson or San Xavier. I knew Con Quien well. I was never at Vinumkirk. I first heard of this suit when a man who lived at Gold came here and was talking about it—he talks a little Papago but not much. His name was Tom Day—he and another American man came. It may be about 8 years ago, it is quite a little while, and ever since that time the people have talked about this matter in and around Santa Rosa country. None of them knew what it was. I have been to Sells often—I was not at the meeting 4 years ago. My uncle was living and he went over. People referring to these villages around here, say it in Indian, but if asked by Mexicans they would say Santa Rosa. My fields belonged to my grandfather and to my father, who is dead. Tom Day and the other American came to see me there at Achi—they talked to me alone—I don't know if they talked to other people at that time. Some of our people stay here at Silynarki to look after the cattle the year round and others go back to the fields to do farming. I start from Silynarki at noon and I get to Achi later in the afternoon.

“Q. Do the Pappago people claim all the country between Achi and Silynarki. A. Yes, and some of this way, and all around here.

“Q. Does the country all around here belong to the people of Achi and Silynarki? A. Yes.

“Q. Don't some of this country around here belong to the Indians living at Sells? A. Indians like we are?

Q. Yes. A. They have their land there on that side
264 just the same as we do here.

Q. They have their land down there just the same as you do here? A. Yes, sir.

Q. They have their land on the other side of Oximo? A. Yes, I don't know where that is.

Q. And the village that is called Goxnuuk, the people of that village have their lands around that village, do they? A. Yes.

Q. And the people around Vinumkirk have their lands around Vinumkirk, do they? A. Yes.

Q. And the people around San Miguel have their lands around San Miguel, do they? A. Yes, it is that way.

Q. That includes both the fields and the grazing land for the cattle and horses, does it? A. Yes.

Q. And you people try to keep your horses and cattle on your lands and those people try to keep their horses and cattle on their lands, do they? A. Yes, we look for them that way if they come in and mix, they get out that way and we go after them, and they go after them." * * *

"Q. Did Con Quien think he was chief of all the Papago people? A. Yes, he may believe that but that was not the way of it, the people never believed it—he died soon after the earthquake."

The people at Achi believe that the whole country belongs to Achi—they believe that the whole people own the country. A man can come from Anegam and settle close to Achi and anywhere he feels like, if he wants to. The cattle of the people of Quijota range along with those of the people of Achi. The cattle all mix up—they don't have to ask anyone. They go to the roundups and get the cattle and bring them here and try to keep them here so that they can have them close around here and not get too far away. The people from other villages would not stop them from straying

265 or grazing as far as they wanted to. The cattle of the different villages mix together on the range. No one else has a right to interfere with my fields at Achi. We don't know anything about a dividing line between the villages. People from Anegam could come and have a field at Achi. I am a kind of chief at Achi. If a man at Anegam came to Achi and wanted to take up a field he would not come to me about: he would go and plant anywhere he saw fit. The people could go anywhere and have their fields there.

"Q. The people of Anegam, Achi, Akchin and Kiacheemuck consider themselves one people, do they not, and go any place they want to in these different villages? A. Yes.

Q. But they don't go off to some other village like Tecolote, San Miguel or Quijotoa, do they? A. No, they never go there.

Q. And if a person from Achi wanted to move down to San Miguel and have his field down there he would go to see the Governor of San Miguel and have his permission, would he not? A. The chief at San Miguel?

Q. Yes. A. No, he would just go there.

Q. But they never do go there do they? A. No.

Q. Do the people of Anegam, Achi, Akchin and Kiacheemuck mix around and go to the different villages, do they not? A. Yes, right around there, they are close together there.

Q. Those villages are all practically one settlement, are they not? A. Yes, they believe they are a little different villages.

Q. And they believe that the people of these villages have their winter homes at Comalik, Comobabi, and Silynarki and Covered Wells, do they not? A. Yes.

Q. And the people of these villages believe that all this country around Comalik, Covered Well, Silynarki, Comababi, Achi, Akchin, Anegam and Kiacheemuck belongs to these people, do they not?

266 A. Yes, they believe that.

Q. And you try to keep your cattle and horses of the people that live in these villages in that district, do you not? A. Yes, where they have water they try to keep them there.

Mr. Fraser:

Q. Has Achi, Kiacheemuck, Akchin and Anegam each a chief, or have they one chief? A. They have a separate chief.

Q. Has each his own council, or is there one council for all of these villages? A. If they have a small matter the village council would get together and talk about it. If they have an important thing all the villages would get together."

Some of the people of Achi move away to other places to make fields. Half of the Achi people have gone to San Xavier—they are living there permanently now.

"Q. According to the Papago people, does all this country around here and between here and Achi belong to the people of Achi and the villages just around it or to all the Papago people? A. They believe it belongs to all of them."

We don't know anything about miles.

Mr. Reid: A cow can range a half day's travel in each direction from water.

"Q. You say that in the villages of Anegam, Achi, Kiacheemuck, and Akchin when anything of importance comes up affecting all the people, the people of those villages get together? A. They would all get together.

Q. Would all the people get together, or just the leading men get together? A. The leading men would get together.

267 Q. Would the captains of all these villages come to the meeting? A. Yes, they would all come.

Q. When you get together in that kind of a meeting, the captain of what village is the head man of such a meeting? A. The chief at Achi.

Q. Is that the village you live in? A. Yes.

Q. Then you are head chief of these villages, when a matter of importance comes up affecting all the people of these villages, are you? A. Yes, I believe I am the chief.

Q. Has it always been that way—the chief of Achi when a matter affecting all the people would come up—that the chief of Achi would be the head chief? A. Yes."

All the land around where the Papagos live belongs to all of them. It has been so always. All the people believe and think that. It is about 4 years ago that I became chief at Achi. Before I became chief I was a leading man of the council for a long time—I always attend.

Mr. Fraser:

The Papagos are very fond of their country—anything regarding the sale of land would be important. There would be a great talk about it. I never heard of the sale of the land before Thomas Day told me.

"Q. In the old days if there was something important came up and the people of these four villages met, would the chief of Kiacheemuck ever call them together? A. They met at Achi.

Q. Did they always meet at Achi? A. Yes."

Just lately they had meetings at Kiacheemuck or Akchin called by their chief. If the chief at Kiacheemuck calls a meeting, it is he who tells them what they have to discuss. He then would
268 be the man to lead; but the man who decides the matter, if it is left to one man, would be the head man or chief of Achi.

Plaintiff read into the evidence extracts from a letter, dated Tucson, Arizona, August 31, 1859, from John Walker, United States Indian agent, New Mexico, to A. B. Greenwood, Commissioner of Indian Affairs, Washington, D. C., the material parts of which are as follows:

"The Pima and Maricopa Indians, living upon the Gila River, and in pueblos or villages number some 1,500 * * * The Papagos speaking the Pima language very well, were originally a part of the same tribe, number some 800, and women and children, some 2,500 or 3,000, and living in pueblos south of Tucson. * * * They dress in citizen's dress, and seem more inclined to civilization than any tribe I have visited during the last two years of my agency."

Also extracts from a letter, dated November 10, 1857, written at Washington, D. C. by Sylvester Mowry to J. W. Denver, Commissioner of Indian Affairs, Washington, D. C., as follows (Sylvester Mowry, Lieutenant, U. S. A.):

"I have the honor to submit to you the following facts in relation to the Indian tribes of the territory known as Arizona, or the Gadsden Purchase. * * * The Pimas have, I am informed, a Spanish title to the lands they occupy. * * * The country occupied by the wild tribes, was expressly declared to be public domain. * * * The Papagos inhabit other villages south of the Gila. Their habits are the same as those of the Pimas, and they may be classed with them. * * * They were classed by the Spaniard 100 years ago among the partially civilized Indians, entitled to hold lands, and they claim their present location under

a Spanish title—probably an Alcalde grant. * * * They are at present extremely anxious about the tenure of their lands, and enquire of all Americans who have visited their villages whether they will be allowed to remain."

To the introduction of which the defendants objected; grounds, immaterial, irrelevant, and perfectly useless; objection overruled and exception noted.

Also extracts from a letter written at Tucson, Arizona, July 10, 1874, by R. A. Wilbur, U. S. Indian Agent, and addressed to Honorable Commissioner of Indian Affairs, as follows:

269 "I would most respectfully beg leave to call your attention to the fact that something must be done toward securing to these Indians the reservation for which they ask, or in lieu thereof, that title be given them to the lands they claim, and their admittance to citizenship of the U. S., be considered at once. As their mining property, together with the different water holes which they claim will eventually be taken from them, i. e. I am fearful of it, and would ask the necessary steps be taken to secure to them what is rightfully theirs."

Also extracts from a letter written at Tucson, Arizona, by R. A. Wilbur, U. S. Indian Agent, August 5, 1874, to Honorable Edward P. Smith, Commissioner of Indian Affairs, Washington, D. C. as follows:

"The claimants are foreigners, not citizens of the U. S., who have squatted upon the aforesaid sections of land, thereby crowding off the Indians who have occupied and farmed at various seasons this land from time immemorial. * * * I deem it an act of great injustice to these Indians to again cut off another portion from their most valuable tillable ground, as the amount of agricultural land is small, in comparison to the grazing portion."

(Speaking of San Xavier, at which place the reservation was created in 1874.) To the introduction of the last extract defendants objected as incompetent and irrelevant; ground, the region is remote from the land, in that, San Xavier is only 9 miles from Tucson, whereas the land in controversy is 30 miles to the west.

Also extracts from a letter, dated October 30, 1875, at Tucson, Arizona, written by John W. Cronyn, to Honorable E. P. Smith, Commissioner of Indian Affairs, Washington, D. C., as follows:

"I respectfully state that the Papago Indians are living in 21 villages, each village is governed by one great captain, he having some 4 to 6 subordinate chiefs under him, each of these chiefs representing from 5 to 15 families. Through this means I find there are 1,000 families besides a large number of Papagos who do not live in any village."

Also extracts from a letter, dated May 25, 1874, from R. A. Wilbur, U. S. Indian Agent to Hon. Commissioner of Indian Affairs, Washington, D. C. (Speaking of the Papagos he says:)

"They are an industrious and agricultural people, and have always been at peace and in harmony with their American and Mexican neighbors. Furthermore, these Indians are self-sustaining and have a knowledge of both the laws and customs of
270 civilized people, and are already in my opinion sufficiently advanced in civilization to be admitted as citizens of the United States."

Also extracts from a letter, written May 31, 1876, at Pima Reservation, Arizona Territory, by Charles Hudson, U. S. Indian Agent to J. Q. Smith, Commissioner of Indian Affairs, in which he says:

"On the Papago Reservation I find affairs much more complicated, Mexicans are now occupying farms within its limits and using the water privileges rightfully belonging to and absolutely required by the Indians, whilst thousands of Mexican stock are being grazed upon its best acres, the Indian cattle being crowded from its pastures or into depressions remote and inconvenient. The Mexican claim is based merely upon the occupancy of the land for years and some rights said to have been originally derived from the Indians, but they appear to have no legal title, there are no records of such claims in the Land Office, and I recommend in accordance with the request made by the Indians at two separate councils that these Mexicans should be requested to leave the reserve, and reasonable notice (say of 6 months) given them during which to dispose of their present crops and remove their stock."

(The above refers to the same reservation of San Xavier, but is written from the Pima Reservation 100 miles north beyond Casa Grande.) To the introduction of which defendants objected; grounds, immaterial and too far away from the present consideration, objection overruled; exception noted.

Also extracts from a letter dated March 14, 1869, written from Tucson, Arizona, by Thomas C. Devin, Lieutenant Colonel 8th Cavalry, battery Brig. Gen'l U. S. Army, commanding District to George W. Dent, Supt. Indian affairs, Arizona Territory, as follows:

"The Papago tribe of Indians located south of the Mission of San Xavier and extending south and west for 100 miles along the Sonora line have for years been friendly, but of late the encroachment of settlers on their land have rendered them discontented, and during the past season their actions and movements caused great uneasiness in this vicinity."

To the introduction of which defendant objected; grounds, incompetent, irrelevant, and immaterial; overruled; exception.

Also extracts from a letter, dated April, 1863, by Chas. D. Poston to Wm. P. Dole, Commissioner of Indian Affairs, Washington, D. C. (Col. Poston was Supt. of Indian Affairs at one time. This
271 letter contains an acknowledgment of notification of appointment as Superintendent of Indian Affairs in Arizona

and appears to have been written before he took office. The letter is a certified copy taken from the original in the archives of the Indian Office of the Interior Department.)

"The Papagos inhabit that triangular space of arid land bounded by the Santa Cruz, Gila and Colorado Rivers and the Mexican boundary line. Their first and principal village is at San Xavier del Bac, a church erected by the Jesuits in 1698. * * * As these Indians were found in possession of the soil they cultivated and have maintained themselves there continuously ever since, it would seem equitable that their rights should be recognized by the Government of the U. S. They are naturally anxious on this subject, and an allowance of land and adjustment of boundaries at an early day may avoid difficulties and complications with Americans who may ignorantly or maliciously encroach upon their ancient possessions. * * * The Papagos within our jurisdiction live in 18 different villages, and are estimated as follows:

By Mr. Reid:

"He then gives an estimate of the population of the 18 villages, running from 250 to 500 to a village, with a total of 6,800 souls, and speaks of Santa Rosa as having 400 souls, and does not speak of Anegam, Achi, Ak-Chin, and these little villages we claim are Santa Rosa. We offer that for the purpose of showing that at that early day these little villages comprised Santa Rosa. These boundaries mentioned include the Papago country and the Pima country also."

"They wash considerable gold in the rainy season, which commences in June and lasts 2 or 3 months. * * * They have great anxiety and uneasiness on this subject, and the inauguration of civil government in Arizona seems a fit time to determine what view the Government will take of these people, what rights accord them, and what policy pursue. * * * An agent for the Papagos ought to be appointed to reside at the Mission of San Xavier del Bac, where their principal chief lives. The present chiefs of these tribes have more than ordinary intelligence, and during my residence in that country were frequently guests at my table, behaving themselves with commendable politeness and propriety. * * * Now having given this slight sketch of the Indian tribe coming within my superintendency it becomes necessary to understand clearly my own rights, powers and duties in regard to them. * * * Have I authority to make treaties by which reservations may be segregated from the public domain for their use, and annuities guaranteed to them for relinquishing their title to all else?"

To the introduction of which the defendants objected on 272 the ground incompetent, irrelevant and immaterial because Poston, at that time was not an officer of the Government at all. He was writing from New York and this letter was not from official knowledge, but such knowledge as came from persons residing in Arizona; overruled; exception noted.

Also extracts from a letter, dated August 12, 1865, from M. O. Davidson, Special Agent to Wm. P. Dole, Commissioner of Indian Affairs, Washington, D. C. at follows:

"The Papagos were originally from the same stock as the Pimas and the Maricopas. These tribes speak a common language, which is conceded to be the ancient Aztec tongue. The last named tribes are acknowledged by the Papagos to be 'Parientes' i. e. friends and brothers. The Papagos represent that portion of the original people who, while occupying the ancient seats, submitted with docility to the teachings of the Jesuit missionaries and embraced the Christian faith, to which they conscientiously adhere; as a community, they have made a very considerable advance in the arts of civilized life. After their conversion from paganism, as a personal distinction, the Papago cut his hair short round the neck, below the ears, and adopted the hat, in contrast with the unconverted Pima, who wears hair of great length, braided in strands, that reach below the middle of the back. The Papagos are probably descended from the most ancient occupants of the continent of whom we have any knowledge. Their traditions reach back to a high antiquity, circumstantial as to details, though obscure as to dates, their unwritten chronicles embrace the epochs of the creation of man, the occurrence of a universal deluge, and the coming of the Spaniards. * * *

The sacred mountain and village of Santa Rosa is a mecca to the Papagos. According to the ancient legend, after the Great Spirit had formed the earth * * *. The foregoing, with many other interesting traditions relating to the conquest were gathered principally from the relations of Con Quien, the intelligent chief of the central Papagos, and through the translation of Mrs. W. H. Tonge, of Cabuadi. * * * Although many of the Indians speak the Spanish language, they are very reluctant to do so. * * * The Papago country extends from the Gila on the north to the Sonora border on the south, and from the Santa Cruz River on the east to the California Gulf on the west. * * * This place is the residence of their 'Governador' or head chief, Don Jose Victoriano Solorse. He is an intelligent and worthy man. He has the welfare of his people at heart, and is respected equally by Americans and Mexicans. * * *

So far as I can learn, they will be better pleased to retain possession of their own little villages and valleys, and unite in forming a central government at San Xavier.

273 to which each community will send delegates yearly to deliberate upon the common welfare and pass such laws and ordinances as the condition of the people may require. * * * The status of the Papagos with respect to the soil ought to be determined in a way that no injustice will be done to them. The Mexicans' laws based upon the laws of the Indians, promulgated by the kings of Spain, recognized the Indians as subjects or citizens, and in most cases confirmed to them, wherever they reside in fixed communities, the titles to the lands where they lived. The Spaniards never made treaties with the Indians, nor extinguished their title to the land, nor did they in any way recognize them as independent

nations. Those who now by the transfer of the political sovereignty of the country find themselves upon American soil and surrounded by Americans look for at least a measure of recognition of their rights equal to that which they enjoyed under the despotic government of Spain. In my opinion we must regard them as American citizens, and under certain conditions, entitled to all the privileges. Many are sufficiently advanced to understand their duties and exercise their rights as such. * * * I will venture to say, that these people, from their intelligence, their morality, and the manifestation of all the requisite qualifications, are quite as much entitled to the privileges referred to, as the majority of the Mexican population who, by virtue of the treaty of annexation, were transferred to the protection of the American flag. In a few words, confirm their possession to the lands they occupy, by the title of pre-emption, establishing suitable metes and bounds thereto, not interfering with the white settlements. * * * If we inquire into their characteristics as a people, we shall find that they are agriculturalists to an extent sufficient to supply their simple wants. At times they have produced a surplus for their less fortunate white neighbors. As warriors and soldiers they have for ages maintained their position against the hostile Apaches; as Christians they have for two hundred years remained the humble, but faithful disciples of the church. * * * In accordance with the stipulations of the council of San Xavier del Bac in January last, they raised and held ready for the field 150 warriors. The various Papago chiefs placed their young men at my disposal. * * * For the latter services I offered them 200 Papago and tame Apache warriors, having been authorized to do so by the chiefs themselves. * * * At San Xavier del Bac the residence of the principal chief, Don Jose Victoriano Solorse, are located 80 families."

Mr. Fraser: Just at that point, if you like, and with your permission, I will put in some of the rest of that same letter, with regard to the contention of the plaintiff that all four of the villages mentioned in the Santa Rosa region were a unit, or are to 274 be considered as such. He says:

"At San Xavier del Bac, the residence of the principal chief, Don Jose Victoriano Solorse are located 80 families. The following villages are also under his immediate jurisdiction."

Then follows a list, among which is "Ana," which may or may not be Anegam, I don't know. And then Acachin, which is obviously Ak-Chin. And then further on he says: "Captain Anastacio governs at Santa Rosa." And then at another place, "Captain Con Quien governs seven villages," the names of which he gives among which is Cocachinit, which I submit is probably Kiacheemuck.

Also extracts from a letter, dated November 30, 1885, Pima Indian Agency, from Roswell G. Wheeler, U. S. Indian Agent to John D. C. Atkins, Commissioner of Indian Affairs, Washington, D. C. as follows:

"In reference to my report dated November 19, 1885, in which I stated that the chief Koon Kan had been removed by me for the reason given and that notice had been served upon the parties engaged in cutting and hauling wood from the lands claimed by the Papago Indians, I have further to report that I was visited yesterday by a delegation of Papagos who informed me that the Americans at Quijotoa mines and in Tucson have taken it upon themselves, doubtless thinking that they will succeed in getting me out of the way by removal, to inform Koon Kan that papers will be received from Washington reinstating him as chief, and he has at once reassumed the authority he before held. Koon Kan has great influence over many of the Indians. He has told them they are fools to listen to the agent or to talk of obeying U. S. Law. * * * Now Koon Kan must be arrested and brought to the agency and the Indians plainly shown that the chief is not greater than the Government."

Also extracts from another letter, dated at the Pima Agency, Arizona, November 19, 1885, from Roswell G. Wheeler, to J. D. C. Atkins, Commissioner of Indian Affairs, as follows:

"I made a thorough investigation among them as to the facts in the controversy between them and the man Dobbs reported in letter above referred to. The statement was made by one Indian and corroborated by many others, that he was born and had always lived at or near this spring. That perhaps two years ago he shut up his house, putting his goods and utensils in a cellar and went to the wheat country on the Gila to work in the harvest fields; was absent perhaps two months. On his return he found that Dobbs had torn his house down, taken the material away, and was using it in building a fence, and was digging a well at the side of the
 275 spring. * * * I then asked him by what authority or right he pretended to claim this well. He replied that he had located it as a mill-site for mining purposes. (Speaking of another place, he says:) 'Here are several natural wells and near these a number of other villages. One of these wells was taken up some two or three years ago by an American in the usual fraudulent manner performed in Arizona, by locating a mining mill site, under the pretense that some mine is near. * * * Here a number of Indians gathered, and one of them stated and the others corroborated, that when the American first came to take up this well, he met him there and told him that it was his, and showed him his brand upon a tree at the side of the well. But, of course, this did not count with the American citizen, who says an Indian has no right to a country which they have always occupied for ages before the first white man appeared there, and that the Indian should be driven away and placed upon a reservation.' "

Mr. Fraser: There is a part of this letter I want to call your Honor's attention to. On page 9 of that letter he says as follows:

"Arriving at Quijotoa the point referred to in my letter of September 23rd, 1885, I found that the prime origin of their trouble

was one Koon Kan, who pretended or did up to the time that I arrived there to be chief of all the Papagos, even claiming that he was chief of the Pimas, as well. As a matter of fact, this Koon Kan is a conceited half wit, knowing just enough to be a dangerous man, and has made me and the Papagos untold trouble, by his interference with the agents and making it his business to oppose everything proposed for the advancement or for the benefit of the Papagos. On all occasions he has told them to pay no attention to the agent, his advice or orders; that he was their commander, to not obey the laws of the U. S., nor send any children to schools; to have nothing to do with Americans. At the same time he was himself always hanging about mining camps and begging from the Americans. He also told them that he was a Mormon, doubtless having been proselyted so far as his evil mind was able to comprehend anything and advising them all to join the Mormons and do as they did. I found that he had been dealing with the Americans to the extent of selling off to them all the wood within 10 miles of this mining camp and pocketing \$1.00 a cord for it. I called all his people up so that they might hear what I said to him, and told them that I wanted them to hear every word. That I was their agent and represented as such the Government of the U. S.; that I had had trouble with him ever since arriving in the country, now over 4 years; that I had now come for the purpose of disposing of him; that I did not think he knew anything, but that if he ever had he must have forgotten it years ago; that he was chief no more."

276 Also extracts from a letter written at Tucson, Gadsden Purchase, New Mexico, January 16, 1858, from John Walker, Indian Agent, to J. W. Denver, Commissioner of Indian Affairs, as follows:

"* * * for a meeting of the chiefs et., of the Papago Indians commencing charges preferred against them for having murdered several citizens of the Territory. * * * I will also enclose you a copy of a letter I received from the Prefect at Altar, Mexico. * * * Their Governor of a mem'ber lodges at San Xavier Mission 9 miles from this place seems to be doing very well; he is sowing and preparing for a crop, he seems to be a very prudent sensible fellow, and promised me that he would notify all their chiefs promptly and would attend himself, and do all he could to have justice done as the wish of their chiefs are to live at peace with whites."

To the introduction of which defendant objected; grounds, irrelevant and immaterial; overruled; exception.

Also extracts from a letter written at Tucson, Gadsden Purchase, New Mexico, December 15, 1857, from John Walker to J. W. Denver, Commissioner of Indian Affairs, as follows:

"* * * the Papagos number about 3,500 and more scattered and there are some charges preferred against some of their people who are said to have murdered some innocent Americans within the last few months, which information never reached me until a short

time since. I have notified the head chief of that tribe to bring all his captains, chiefs, to this place in January so as to have an investigation of their conduct, * * * the headmen are very fearful of war with the whites as all they have is a little stock and they think that will all be taken from them. Old citizens here think they will act honestly in an investigation of the charges that are made, which I hope will be and without any difficulty."

Objection by defendants as irrelevant and immaterial; overruled; exception.

Also extracts from a letter written at Altar, December 23, 1857, from Jose M. Redonda, to John Walker, transmitted to Commissioner of Indian Affairs January 16, 1858.

"As a public functionary of this District * * * I believe expedient to advise you that the aggressors are two Papago Indians of the rancheria of Pirigua commanded by an Indian called Boca Negra (Black Mouth) who according to information I have received by holding a council with the governors pertaining to Mexican Territory which for this purpose took place a short time since in this village was a participant in the deed or concealed the aggressors when it was proposed to punish them by another Indian Governor belonging to Mexican Territory who before the denunciation of the boundary was subject to the jurisdiction of Pirigua to which the aforesaid aggressor belonged on account of the circumstance. * * * Having pointed out the perpetrators of the crime which you wish to punish, it remains for me to point out the means of apprehending them which my experience has taught me to be the best. It is to secure the chief Boca Prieta and deprive him of his liberty until he through his agents deliver up to you the aggressors. Then you can have an examination and punish those who are guilty. * * * I will also inform you that the principal chief of the Papago tribe resides in the village of Petiquito and has no command over the Indians who occupy the territory of the U. S., the name of this chief is Don Jose Lisarraga."

Objection by defendants as irrelevant and immaterial; overruled; exception.

Also extracts from a letter written at Tucson, Gadsden Purchase, New Mexico, February 10, 1858, from John Walker to J. W. Denver, Commissioner of Indian Affairs.

"My council with the Papago tribe of Indians held at this place, closed on the 30th ultimo and they seemed well satisfied with the result, I talked very kind to them, there were 14 of their pueblos represented by captains, governors, etc. and 4 that were not. One of those not represented was where these men lived who committed the murder. * * * they seemed to understand their obligation to the American people and their laws. * * * several of their captains brought small parcels of gold dust, say \$10, \$12 and \$13 worth and sold it and say if they had suitable picks etc. they could do pretty well though water is very scarce in their country. * * * Colonel James Douglass who lives at the Sopia Silver Mines near

some of their villages says their country is very dry and of a dry season they have to suffer or steal and sometimes they do steal. * * * The pueblo of San Xavier some 9 miles from Tucson is a very pretty place and they have good land and animals to work their fields on which they sow wheat, barley and plant corn, I have visited them several times and they seemed to be doing very well and are not so much disposed to beg as the Pimas, Maricopas whose number, etc., I will give you in our next mail, I will make an effort to ascertain their number and grades. According to the best account I could get from the Papagos they have 800 men and women and about 1,500 but Colonel Douglass says there are at least one-fourth more, he has lived near them for several years and they seem to have great confidence in what he tells them. * * * The old chief said he would do his best to take those murderers and if he could not get them he would assist the troops in taking them.

278 Report by Sylvester Mowry to Hon. Charles E. Mix, Commissioner of Indian Affairs, dated Sept. 24, 1858.

"I have at last got something definite in regard to the Pima and Papago Indians' title to their lands. It appears that at the close of the Papago rebellion in Sonora some time about 1840 under the leadership of General Gandosa reservations were assigned to the Papagos and their titles to these lands made complete. The lands they occupy in Arizona are utterly worthless for cultivation, and they should be changed at once. It is a general fact in reference to all the Indians of Arizona, that they must cultivate—depredate—or starve. * * * The Pimas have occupied their lands from time immemorial and their title has been recognized successively by the Kings of Spain, their viceroys, in Mexico by the General Government and the State of Sonora. * * * Report in relation to the Pimas and Papago Indian title to character of their lands, the want of a knowledge of those Indians by the New Mexico Supt. etc. etc."

Objected to by defendants as not an official report, as incompetent and immaterial; overruled; exception; defendants move to strike.

Certificate of Lieut. A. B. Chapman About the Issue by Agent Colonel John Walker of Supplies to the Papagos about January 27, 28, and 29, 1858.

"I certify that about the 27th, 28th and 29th of January, 1858, I was in Tucson, New Mexico, in command of Company K, First Dragoons attending an Indian Council of the Papago Indians assembled by Colonel John Walker, Indian Agent at Tucson, to investigate a case of the murder of one or more American citizens reported murdered in their country and for other purposes. These Indians were for several days assembling and remaining necessarily in Tucson for several days at the Council the Indians present numbered several hundred; * * *"

Objected to by defendants as irrelevant and immaterial; overruled; exception.

(Counsel for plaintiff thereupon read the following:)

Letter of C. H. Lord from U. S. Indian Agency at Tubac to the Commissioner of Indian Affairs Dated April 1, 1866

"I have sent notice to Jose Lucas, chief of the Papagos, to meet me in council of May, bringing with him the sub-chiefs and head-men of the different pueblos. * * * I learned of the affair at once and immediately sent a demand to Con Quien the captain of the pueblo to make restitution, which he done and since I have had no complaint. Those at San Xaxier sent a delegation to me 279 a few days since with a complaint of the Mexicans living among them, interfering with their water rights and badly misusing those Indians who attempted to defend their rights. I wrote a letter to the Chief requesting him to take no summary measures with the offending parties, but to inform them from me officially, that any further trespass would result in the ejectment of the offenders."

Objected to by defendants as irrelevant, incompetent, and immaterial; overruled; exception. (Counsel for the plaintiff thereupon read the following:)

Letter from John C. Dunn to Hon. S. C. Pomeroy and by Him Referred to the Secretary of Interior and, under Date of Oct. 8, 1867, to the Acting Commissioner of Indian Affairs.

"* * * I refer to the Moca Indians, who have ever been and are now friendly with the whites as much so perhaps as the Pimas or Papagos."

Objected to by defendants as irrelevant and immaterial; overruled; exception; defendants move to strike. (Counsel for the plaintiff thereupon read the following:)

Letter from Captain Charles A. Whittier to Gen'l James B. Fry with respect to governmental care of the Indians, dated June 6, 1868, filed in the Department of the Interior Sept. 30, 1868, and by order of the Secretary referred to the Commissioner of Indian Affairs for his information.

"The Papagos in the southern and southwestern part of the territory are, like the tribes last mentioned, industrious, and like them friendly to us and hostile to the Apaches. Nothing is done by our Government for them."

Objected to by defendant as irrelevant and immaterial; overruled; exception. (Counsel for the plaintiff thereupon read the following:)

"Report Transmitted by Col. George L. Andrews, Supt. of Indian Affairs for the Territory of Arizona, to Honorable E. S. Parker, Com. of Indian Affairs, dated Sept. 8, 1869, and reporting 2,000 acres under cultivation by the Papago Tribe of Indians with 4,000 bushels of wheat raised valued at \$4,800; 5,000 bushels corn raised

valued at \$6,000; 500 bushels beans raised valued at \$600; 150 pumpkins valued at \$150; 3,000 horses owned valued at \$60,000; 200 work oxen owned valued at \$1,000; 1,000 other cattle owned valued at \$20,000."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff thereupon read the following:)

Letter from Joseph S. Wilson, Commissioner of the General Land Office, to Honorable Eli S. Parker, Commissioner of Indian Affairs, Dated November 16, 1869.

"Inquiries having been made at this office relative to the Indian title in certain parts of the territory of Arizona I have the honor to enclose herewith a map of said territory with request that you will indicate thereon that portion of the same in which the Indian title has been extinguished. In reply accompanying the enclosed map be pleased to refer to this letter as 'G' by its date.

I am, very respectfully your obedient servant.

JOSEPH S. WILSON,
Commissioner."

(Counsel for plaintiff thereupon read the following):

Letter from Captain F. E. Grossman, United States Special Indian Agent, to Colonel George L. Andrews, Supt. of Indian Affairs, Arizona Territory. Dated Dec. 3, 1869.

"* * * The Papago Indians are and have been for years past the best, most industrious and civilized Indians of Arizona, they embraced the Christian faith years ago and strictly adhere to it; they are and have always been on the most friendly terms with the whites and Mexicans, many speak the Spanish language fluently; the tribe has from time to time rendered valuable services by scouting against the hostile Apaches and altogether no Indians of this territory have a stronger claim upon the fostering care of the Government than the Papagos. The Papagos number nearly 7,000 souls and roam over a large tract of country extending from the Gila River southward to the Sonora lines and from the Santa Cruz River westward to the Gulf of California. Most of this country is a waste desert, but wherever nature has provided water, no matter how small the stream, there can be found the Papago industriously at work, with poor tools cultivating the soil. Many of the mountain valleys in their country contain small villages and in many instances they have constructed large tanks which overflow during the rainy season. The water thus gained they husband carefully and conduct it by means of acequias to their fields. Many of them, however, do not cultivate the soil but gain an honest livelihood by day labor, some are skillful masons and all excel in the manufacture of coarse pottery ware. A number of Papagos gathered years ago around the Catholic Mission of San Xavier del Bac near Tucson A. T. cultivated the Mission-Lands and erected permanent homes. I doubt however

281 that the Government ever gave them a title to the land so settled, for I am creditably informed that both American and Mexican settlers have encroached upon their lands near the Mission to such an extent that many Papagos have been driven off and forced to seek a home elsewhere. Their farming implements are principally made of wood. They have few iron tools, do not understand how to repair them, and certainly need a blacksmith. * * * In the meantime I would request authority to assist those of the Papagos who may come in the vicinity of my agency."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff thereupon read the following:)

Letter from A. P. K. Safford, Governor of the Territory of Arizona, to Hon. J. Q. Smith, Com. Indian Affairs, Dated Dec. 18, 1876.

"* * * Papago Indians, they are generally honest, peaceable and self-sustaining. They own their property separately and I have long been of the opinion that to break up this system of acquiring and owning property and compel them to submit to the usual mode of governing Indians on reservations could not result otherwise than very disastrous to them, and I am clearly of the opinion that they should be stimulated and assisted to locate homes on the public domain wherever they choose to settle. They now live in various parts of the country. The larger portion living from 50 to 100 miles west of their reservation on the Santa Cruz. This is a dry section of country not coveted so far by the whites and probably has been occupied by them for centuries. Some of them live on the Gila River and one has located and paid for 160 acres of land and has received a patent for the same."

Objected to by defendants as irrelevant and immaterial; overruled; exception; motion to strike. (Counsel for plaintiff thereupon read the following:)

Letter from Capt. F. E. Grossman, U. S. A., Special Agent, to Col. Geo. C. Andrews, U. S. A., Supt. of Indian Affairs, Arizona Territory, Dated Oct. 31, 1870

"A few days ago another deputation of Papagos, principally from San Xavier, headed by Jose Lucas who claimed to be their 'Governor' visited my agency for the purpose of representing that Mexicans were encroaching upon their lands near San Xavier and that some of their young men had sold certain portions of this land to Mexicans without consent of the tribe. * * * It is wrong indeed that a friendly and industrious nation like the Papagos are being left without aid and advice by the Government. As represented before I am still of the opinion that someone should be empowered to visit them ascertain their wants and attempt to locate them. By means of the Papagos who were here I hope to be able to collect all the chiefs and have fixed upon the 20th day of the coming month as the day upon which I shall make the issue of goods to that tribe."

282 Objected to by defendants as irrelevant and immaterial; overruled; exception; defendants make motion to strike. (Counsel for plaintiff thereupon read the following:)

Letter from J. M. Stout, Indian Agent, to Com. of Indian Affairs,
Dated July 12, 1878.

"You are probably acquainted with the latest history of these Indians. The three tribes (Pimas, Maricopas and Papagos) number about 11,000 souls. They are and have always been self-sustaining and have never yet cost the government a single dollar, for support. They have always maintained peaceable and friendly relations with the white man and truly boast that they have never killed one of our race. The first two named tribes are farmers, and the latter are farmers and stock growers."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff thereupon read the following:)

Letter of A. H. Jackson, U. S. Indian Agent, to Hon. H. Price, Com. of Indian Affairs, Dated March 7, 1883, and Copy of Proposed Contract Between the Papagos and the Southern Arizona R. R. Co., Referred to Therein.

"We, the undersigned chiefs and headmen of the Papago Indians in council assembled this the 5th day of March, 1883, at San Xavier del Bac, having been called together by U. S. Indian Agent, A. H. Jackson of the Pima Agency, Arizona, for the purpose of considering the proposition of the Southern Arizona R. R. Co., for the right of way through our reservation at Xavier. * * * I have visited the Papago reservation and have laid the matter before the chiefs and headmen who transact the business for the Papago Indians. The chiefs and headmen in council assembled readily consented to, and signed the statement which is herewith enclosed for your information."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff then read the following:)

Letter from A. B. Ludlam, Agent, to Com. of Indian Affairs, Dated August 6, 1880.

"Ascension, Chief, said that he had received \$200, afterwards said \$300, receiving half pay in goods. He was asked what disposition had been made of the money, etc.; he replied that it was shared with the Papagos."

283 Objected to by defendants, as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff thereupon read the following:)

Extract from Special Orders No. 12, Headquarters Department of Arizona, U. S. A., Oct. 31, 1881.

"VI. Second Lieutenant S. C. Mills, 12th Infantry, now at Fort Bowie, A. T. will proceed to the Papago Indian Reservation via Ft. Lowell, A. T. and enlist a company of 25 Papago Indians as scouts. Upon completion of this day Lieut. Mills will proceed with his company to Camp Huachuca A. T. and report to the commanding officer for duty. The Quartermaster's Department will furnish the necessary transportation."

Objected to by defendants as immaterial and irrelevant; overruled; exception. (Counsel for plaintiff thereupon read the following:)

Copy of Contract Made April 21, 1882, Between C. P. Sykes and Ascension Rios.

"Articles of agreement between Col. Sykes and Ascension Rios as chief of the Papagos of St. Xavier Ar. Territory for the construction of the Arizona Southern Railroad. 1. Right of road (200) two hundred feet wide entering reservation about 1 mile inside eastern boundary from the north, thence south for whole length of 8 miles coming out about within $\frac{1}{2}$ mile of southeastern boundary well fenced on both sides with secure passage at intervals for animals, etc. 2. All timber cut being within said line to be the property of the Papagos to carry off, and with the privilege of selling the same to the Chief of the R. R. 3. The company bind themselves to erect on a site selected for the chief of the Papagos within said reservation a school house as they may desire it of adobe to cost \$3,000.00 with a view to greatest economy constructed with suitable windows, doors, flooring, etc. Any sum less expended on the house shall go into the hands of the chief of said Papagos to be applied as best said Indian may see fit for the good of their people. 4. It is the desire of the Indians of this reservation hereby agreed to not occupy on works in the construction of the roads nor of the school house, any Mexicans who heretofore have been or hereafter may be expelled from the limit of the St. Xavier Papago Reservation, Ar. Ter. All these conditions to be complied with provided it meets with the consent of the Federal authority at Washington City, D. C. C. P. SYKES.

RIOS (his x mark).

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter from A. B. Ludlam, U. S. Indian Agent at the Pima Agency, to the Com. of Indian Affairs, Dated July 9, 1880.

"I have the honor to advise the Dept. that in making payment to Ascension the Papago interpreter for the 2 years 1880 that I told him that his appointment for the future was uncertain until I could have instructions from the Hon. Commissioner.

I stated this because he had made sale of land and property upon the reservation without any authority to parties representing the San Xavier Mining & Smelting Company and further to wait the action of the Department in the appointment of a physician. Ascension does not speak English; Spanish and the dialect of this tribe alone."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter from Wm. Troiel to the U. S. Agent for Pima, Maricopa, and Papago Indians at Casa Grande, Ar. Ter., Dated April 21, 1882.

"That the Papagos this day held a council largely attended to by them at the house of and presided by their chief Ascension Rios by which they 'for the consideration of the erection of a school house this fall within the Reservation on a site selected by the chief and constructed with a view of the greatest economy to be made of adobe with suitable doors, windows, flooring etc., and so arranged as the chief on behalf of his people may desire, to cost \$3,000 provided that any unexpected part of said sum, after the completion of the house, shall go into the hands of the chief to be applied to the best interests of his people, and for some minor consideration of their appropriating the wood cut within the line of the road.' Have unanimously given their consent to the construction of the Arizona Southern R. R. through the eastern boundary of their reservation north to south entering about a mile west and going out about one half mile west of said eastern boundary extending for eight miles 200 feet wide to be well fenced on both sides with secure passage at suitable intervals for animals etc. Said Arizona Southern R. R. Co., being represented by Col. C. P. Sykes. The Papagos through the chief Ascension Rios pray that this agreement may meet with your recommendation for its approval by the Hon. the Commissioner of Indian Affairs.

I am sir, most respectfully, your very obedient and humble servant,
WILLIAM TROIEL."

Objected to by defendants as irrelevant, incompetent and immaterial; overruled; exception; motion to strike. (Counsel for plaintiff read the following:)

Report as to the Number of Indians in Arizona Received by the Indian Office April 22, 1863.

"Papagos (Pimeria Alta), 7,500 souls."

Objected to by defendants as immaterial and irrelevant; overruled; exception. (Counsel for plaintiff read as follows:)

285 Letter from Chas. D. Poston to Brig. Gen. James H. Carlton, U. S. A., at Santa Fe, New Mexico, Dated March 10, 1864.

"I must not omit to mention by way of commendation that the principal chief of the Papagos, Capt. Jose, upon learning our abandoned condition with an alacrity worthy of imitation organized an

efficient escort to this place. * * * The Papago chief organized an escort for us to this place which if not so grandly panoplied as the dragoons," etc.

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter from M. O. Davidson, Special Agent, to Com. of Indian Affairs, dated Sept. 5, 1865.

"In view of the facts set forth in my late communication to you, I recommend the following policy to be pursued in respect to the Papago Indians of Arizona. It being understood that these people because of their docility, intelligence and Christianity, are already far advanced towards civilization, requiring at the hands of the government, a treatment and encouragement differing somewhat from that usual when dealing with the unreclaimed savage. 1st. Let the agent for the Papago Indians be instructed to report directly to the Indian Bureau. 2nd. Let the proportion of the territorial appropriation for the Papagos be expended by the agent in conformity to the wishes of the chiefs and council. * * * 6th. Give the head chief duly elected a salary of \$500.00 per annum—and to the three subordinate chiefs or captains of villages a salary of \$350 per annum."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter of Chas. D. Poston to Com. of Indian Affairs dated April 27, 1865.

"The Indians of Arizona need only agricultural implements, hoes, spades, shovels, axes, and knives, in short tools to work with and then let them work or starve. They are able and willing to work and under the circumstances I would recommend that the Supt. be placed in possession of the appropriation and allowed to purchase such tools as they actually need in San Francisco where they can be obtained at reasonable rates adapted to the people."

Objected to by defendant as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Portion of a Letter from M. O. Davidson, Special Agent, to Com. and Letter of Instructions from the Commissioner to said Davidson, dated Sept. 7, 1865.

286 "According to Con Quien, the average number of persons in each family may be assumed at five; consequently we have (exclusive of the village of Sonoita) an aggregate population of 6,305 Papago Indians located on American soil. * * * Their habits are naturally pacific, and they willingly cultivate the soil wherever nature has given them arable land and water for irrigation. * * * In the building of their huts they show consider-

able skill and ingenuity, while all the coarse pottery used in the country, both by whites and Indians, such as water jars, milk pans, etc., are the production of the Indian women. Their baskets are made of the strongest materials and so closely woven as to be impervious to water. Many of them possess considerable stock in horses, mules, and horned cattle. * * * Provision will be made for the payment of a salary of \$500 per year to the duly elected head chief of the Papagos, and to three subordinate chiefs of \$350 each per annum, to be paid so long as they shall continue friendly and efficient in aiding the U. S. authorities in preserving the peace and in the improvement of their people."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter from A. H. Jackson, U. S. Indian Agent, to Hon. H. Price, Com. of Indian Affairs, Dated March 7, 1883.

"The Papagos are a sober, industrious class of Indians and I do not think too much could be said in their behalf, if being sober, industrious, quiet, peaceable and honorable should be encouraged by the Department, then I think these Indians are especially entitled to encouragement, they informed me that they have had no school for 9 years; * * * that they should be encouraged in their already advanced stage of civilization is a fact that can be seen by the Department without argument. * * * The chief occupation of the Papagos, is farming, this year however, they are prevented from tilling as much land as they desire, on account of drought of 1882, which left them a very light crop and consequently very little grain upon which to live or to plant this year. During my recent short visit, I found that several Mexicans were living on the Papago Reservation, but as my official duties would not permit me to stay longer I did not investigate their rights or claims.

* * * The public property at this reservation is in the hands of Wm. Troiel, the former interpreter, who has been storing the property for the past 4 month. * * *

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter from D. F. J. Hart to R. G. Wheeler Dated San Xavier, Nov. 6, 1884, and Filed in the Indian Office in that Year.

287 "I had the pleasure to write a letter to you for the chief Ascension Rios concerning Padre Antonio and the two families still living on the reservation. I am informed by other and disinterested parties that this Antonio has been interested in and assisted in the occupying of lands and houses on the reservation by Mexicans, I am confident that he is in league with Berger and others who have for sometime been trying to dishearten the Indians and get the land of the reservation away from them. Some question or another comes up every day and the Indians not knowing what

to do often come to me. I advise them as far as I can but there are some things which will require looking into. Berger is a nuisance and I believe he is at the bottom of the greater part of all the trouble here and made bolder by those who encourage him by saying they will see him well suited here. He even brags that if the authorities at Washington drive him away that those at Tucson will put him back. The election was held at the Mexican village just north of the reservation. The reports and all papers of the election held there were headed San Xavier, (this I know for I was one of the judges). I believe this village is located there expecting in time to get possession of more or less land now within the reservation. * * * I know that Ascension Rios (the chief). * * * This Judge Meyers at one time about 2 years ago wrote Ascension Rios (chief) a letter telling him that the Papagos had no more right to the water than anybody else and if they continued to interfere unjustly with the water, he (Meyers) should send an officer for him (Ascension) * * * As Mexicans have been on the reservation and cleaned ditches unbeknown to the Indians, I have advised them to not let anybody come on the reservation to do work of any kind outside of the church and Berger's claim."

Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter of Henry J. McQuigg, Supt., to Com. of Indian Affairs,
Dated Jan. 22, 1913.

"* * * That I be allowed to keep the territory line on the east side of the Roskrige Baboquivari Ranges of mountains under my supervision. * * * which *which* the Indians are living in scattered villages. I am submitting under separate cover a map #7018 Tube 958, of Pima County which comprises my present jurisdiction and I have drawn a red line along the township lines closes to the crest of these mountains and I respectfully recommend that the country lying to the east of it be allowed to stay under this Agency. These mountains constitute a natural division point and a barrier, as there is only the one pass in them at the south end of the Roskrige Range which is suitable for a loaded wagon. These mountains have always formed the boundary of the 'Papago country' where the Indians lived and separated them from the Mexican settlers on this side and the Indians living on the reservation to a very great extent. The Indians have always claimed the country there and it has been easy to stop any of the Mexicans' or Americans' cattle in coming across these ranges."

288 Objected to by defendants as irrelevant and immaterial; overruled; exception. (Counsel for plaintiff read the following:)

Letter from George J. Roskrug to Roswell Q. Wheeler, U. S. Indian Agent, Pima Agency, Dated Oct. 27, 1881.

"The Chief 'Ascension was with me when I ran * * * belonged to the Papagos from time immemorial, and that the Mexicans settled by leave from the Papagos to get protection from Apaches.
* * *

Objected to by defendants as irrelevant and immaterial; overruled; exception.

Whereupon, **Adelaide Chamberlain** was called as a witness on behalf of the plaintiff, and having been first duly sworn was examined and testified as follows:

Direct examination by Mr. Reid:

Adelaide Chamberlain is my name; I reside and have resided at Los Angeles, California for six years. I have made a specialty of the study of the Indians in the southwestern part of the U. S. and of Mexico and South America for approximately 10 years in intensive form, particularly regarding ethnology and archaeology of the southwest. I have held the position as assistant curator of archaeology and ethnology for 2½ years and for another 2½ years I was curator of ethnology and archaeology in the Southwest Museum which has for its purpose the dissemination of knowledge of the history and ethnology of that region. I have made a study of the Spanish language in connection with this work. My education was in the public schools and high school in Cincinnati, and then I was privately tutored by my father and then I did field work in the University of Arizona and the University of New Mexico in archaeology and Spanish. I studied at the University of Mexico, in the City of Mexico, one summer. The field work was that of an archaeological student and I did practical work in the field. I have visited, studied and worked at Tucson, Arizona, not for university credit. I have made a study of the history and arts of the Papago Indians.

289 "Q. Miss Chamberlain, have you made any study of the New Mexico Indians who lived in pueblos or villages?

Mr. Fraser: That is objected to as incompetent, irrelevant, and immaterial.

Overruled; exception noted.

A. Yes, sir, I have visited and made a study of the pueblos of Tesuque in New Mexico and Moencopi in Arizona. As a child I went to Laguna once. I have made a study of Laguna.

Q. Have you made a study of the handiwork of the New Mexico Indians and of the Papago Indians?

Mr. Fraser: Objected to as incompetent, irrelevant and immaterial. Objection overruled; exception noted.

A. Yes. From what I have studied I have compared their work—basket making, blanket making and pottery with the work of other pueblo Indians in Arizona and New Mexico.

Q. How does the work, as a finished product, compare between the Papago and other pueblo Indians of Arizona and New Mexico?

(It is stipulated that defendants' objection goes to all this line of testimony, and that an exception is reserved without repetition.)

"A. The cooking utensils of all these tribes, beginning with the pottery, is very similar; the decorated things that they make in pottery vary in design, and vary in beauty, but they average very much the same in quality all over the area. As far as the basketry goes, you will find that the Pima and the Papago basketry is very fine; finer than the Hopi basketry for instance; whereas the finest Hopi pottery is finer in the same relation than the Papago pottery. They all wove cotton garments originally in about the same manner before the coming of the Spaniards.

290 Plaintiff read into the record extracts from the report of the Arizona Superintendency of Indians, dated Sept. 30, 1864, signed by Chas. D. Poston, and embodied as a public document, in Executive Documents of the House of Representatives, 2nd Session, 38th Cong. page 297, as follows:

"The Papagos are a branch of the great Pima tribe, speaking the same language, and having the same manners and customs, modified by civilization; the only difference is that upon being baptized, the Pimas were originally called Vassconia, in their language Christians, which has been corrupted into Papagos; they also cut their hair short and wear a hat, and such clothing as they can get. The Papagos all live south of the Gila River, in that arid triangle known as the western part of the Gadsden Purchase. Their lot is cast in an ungrateful soil; but the softness of the climate reconciles them to their location, and contentment is their happiness. The fruit of the *Cereus Giganteus* furnished them with bread and molasses; they plant in the rainy season, raise cattle, hunt, and labor in the harvest fields of Sonora."

Then, skipping onto the next page, page 298, it goes on as follows:

"These deserving people should have additional aid, to enable them to colonize the straggling members of the tribe within this reservation; their principal wants are agricultural implements, carts, wheelbarrows, axes and hoes. Col. M. Oliver Davidson, the Supt. of a mining company in the vicinity, kindly consented to take charge of the agency; and as he is a gentleman of cultivation and morality, will exercise a beneficial influence over these friendless people. With the necessary aids in agricultural implements, they can soon produce a surplus to exchange for clothing and the comforts of life, so that they will be an advantage to the community instead of a tax on the government. They number about 5,000 souls living within our boundaries."

Mr. Fraser: That is objected to by the defendants, as incompetent, irrelevant and immaterial.

The Court: Well, that is the character of evidence I have been admitting very generally under your objection.

Mr. Fraser: Yes, sir.

The Court: Objection overruled.

Mr. Fraser: An exception, please.

Mr. Rounds: I read from page 142 of the 'Report on Indians Taxed and not Taxed in the U. S., at the 11th Census, 1890' bearing the Washington Government Printing Office Stamp, 1894, reading as follows: The heading is "Papagos living off the Reservation."

291 (Reading:) "These Papago Indians live in the southern part of Pima county, along the southern border of the territory of Arizona. Their language is similar to that spoken by the Pimas. They roam over a country about 100 miles in width north and south and about 125 miles east and west, and there are a few small villages over the Mexican border but near the boundary line. The country in which they live consists of broad, open plains, divided by mountain ranges. The valleys or plains are arid, having no natural springs or running streams of water; yet after the summer rain these plains are covered with grass of a fine quality, and owing to the dryness of the air this grass is cured or dried on the ground and furnishes good rich food for cattle during the remainder of the year. The Indians select their dwelling places at the foot of the mountains near the mouth of the various canyons that open out into the plains. Small springs often flow through these canyons and sink into the sand. The Indians utilize these springs or sink wells into the sand, and thus secure the underflow from the springs. Their cattle feed out into the plains and return to these wells or springs to drink. Near these watering places usually on an elevation the Indians build their houses in their permanent villages of adobe, about 12 feet by 16 feet in area and about 8 feet in height. Small poles are laid on top and crosswise of the building, and on these are laid brush with weeds or grass on the brush, the whole covered with about six inches of clay, which is impervious to water. The floor is of clay, and there is one doorway, but no windows. The doorway is sometimes closed with a dried beef hide. As a rule, they live on the outside of the house. The house contains no furniture except a little bedding and some cooking utensils. Their food consists of beef, dried wild fruit, dried mesquite beans made into a kind of bread, and wild game. During the summer rains they raise some vegetables, which they dry for winter use. They also sell or trade cattle to settlers in the Gila and Santa Cruz valleys for wheat and corn, which the women grind in their crude way into meal and flour. They have adopted the civilized mode of dress, and are gradually learning the use of soap. The women of the tribe are virtuous and industrious, being in these traits far in advance of any other tribe in the territory. There are 4,800 of this tribe living off the Papago reservation. With rare exceptions they are self-sustaining, have always been good citizens, and on many

occasions have joined with the whites to assist in suppressing murderous Apaches. The principal occupation of the men is raising cattle and horses, and a little farming when they can find a piece of damp ground that will raise corn and vegetables, hunting, chopping wood around mining camps and ordinary labor wherever they can find it. If there is any mixed blood in the tribe it is not perceptible. There are several mining camps scattered throughout the country which these Indians inhabit, and in some of the large valleys wealthy men or companies have sunk wells 500 or 1,000 feet deep and established cattle ranches or ranges, and many Indians are employed about these camps and mines." * * * A month's travel in these Papago villages failed to reveal a single case of drunkenness, although there are frequent instances of drunkenness among Indians in the streets of Tucson. They have great numbers of horses and cattle, but it is impossible to form a correct estimate as to numbers. The horses are small and inferior, but the cattle are fully up to the average in size and quality. These Indians as a tribe have always been exceptionally friendly to the white people. They have never received aid from the government. The little religion they have is a conglomeration of Roman Catholicism, superstition, and Indian Voodooism. The Roman Catholic Church established missions among them more than 150 years ago.

Defendants offer the same objection; same rule; exception noted.

Mr. Rounds: I now read from page 95 et seq., of the report of Wm. H. Emory, Major, First Cavalry, and U. S. Commissioner on the Mexican boundary survey, contained in House of Representatives Executive Document, Vol. 14, Part 1, No. 135, 34th Cong. 1st & 2nd Sess., 1855 and 1856. So we are getting right back to the time of the treaty. I think in explanation I may say that he was a boundary commissioner, and this was his official report. (Reading:)

"The most considerable and interesting settlement in the new territory is composed of a confederacy of semi-civilized Indians, the Pimas and Coco Maricopas. Their population is variously estimated at from 5,000 to 10,000. The Military Commandant at Santa Cruz estimated the number of warriors which they could muster at 2,000. They are located on the Gila River, and form the most efficient barrier for the people of Sonora against the incursions of the savages who inhabit the mountains to the North of the Gila, and who sometimes extend their incursions as far south as Hermosillo, in the State of Sonora. I became acquainted with these people in 1846, and in another work eulogized their advanced state of civilization, their proficiency in agriculture and the art of war, and their morality. While at Los Angeles, our last astronomical station near the 111th meridian of longitude, a delegation, consisting of the chiefs and headmen, visited my camp, nearly 200 miles distant from their homes, to consult as to the effect upon them and their interests of the treaty with Mexico, by which they were transferred to the jurisdiction of the U. S. I give below a copy of the statement

made at the meeting, where it will be seen I said all in my power to silence their apprehensions. They have undoubtedly a just claim to their lands, and if dispossessed will make a war on the frontier of a very serious character. I hope the subject will soon attract the attention of Congress, as it has done that of the Executive, and that some legislation will be effected securing these people in their rights. They have always been kind and hospitable to emigrants passing from the old U. S. to California, supplying them freely and at moderate prices, with wheat, corn, melons, and cotton blankets of their own manufacture."

Now, a copy of the statement that he mentions. (Continuing reading:)

"Camp at Los Nogales, June 29, 1855.

"Capt. Antonio Azul, head chief of the Pimas; Capt. Francisco Luke, Coco Maricopa chief; Capt. Malai, Coco Maricopa, chief; Capt. Shalan, a chief of Gila Pimas; Capt. Ojo de Burro, war-chief of Pimas; Capt. Tabaquero, a chief of Gila Pimas; Capt. La Boca de Queja, a chief of Gila Pimas; Capt. Jose Victoriano Lucas, head chief of San Xavier Pimas; Capt. Jose Antonio, chief of San Xavier Pimas, have this day visited my camp for the purpose of ascertaining in what manner the cession of the territory, under the treaty with Mexico, will effect their rights and interests. I have informed them that by the terms of the treaty, all the rights that they possess under Mexico are guaranteed to them by the U. S.; a title to lands that was good under the Mexican Government is good under the U. S. Government. I informed them that, in the course of 5 or 10 months, perhaps sooner, the authorities of the U. S. would come into the ceded territory and relieve the Mexican authorities; until that time, they must obey the Mexican authorities, and cooperate with them, as they have done heretofore, in defending the territory against the savage Apaches. I have examined the testimonials given by numerous American emigrants to Azul and his captains bearing testimony to the kindness and hospitality of himself, and the Pima and Coco Maricopa Indians generally. I can myself bear testimony to the truth of these statements. I therefore call upon all good American citizens to respect the authority of Azul and his chiefs.

W. H. EMORY,

U. S. Commissioner, Major, U. S. A."

And then there is another list of the names of the chiefs which it is hardly necessary to copy. Then he continues (continuing reading):

"I furnished the head chief a copy of this paper and gave him for distribution among his subalterns, some silver dollars, and all the blankets and clothes which could be spared from our camp." which

Same objection; same ruling; exception noted.

Whereupon plaintiff offered in evidence a map which was admitted and marked Plaintiff's Exhibit 12 A, which map is about 5 inches by 7 inches and is made by Robert P. Porter, Supt. 11th Census of the U. S., and is entitled map of Papago Indian Towns, Southern Arizona, Pima County, shows the population and also indicates 6 villages in the south and east in Santa Rosa valley.

To the introduction of which defendants objected; same ground; objection overruled; exception noted.

(Here follows map, Plaintiff's Exhibit 12a marked page 294.)

295 Mr. Rounds: I read from the report of the Commissioner of Indian Affairs, dated November 22, 1856, and appearing in Senate Document, 3rd Session, 34th Congress, Vol. 2, page 566, as follows:

"The pueblo Indians maintain their character as peaceable, industrious communities. Some of them have lost the title papers for the grants of land obtained by them from Spain and Mexico. In such cases their agent has taken testimony in their behalf. They deserve the fostering care of the Government, and Congress will no doubt confirm their titles. About 5,000 Indians are embraced within the Gadsden Purchase. They are mostly pueblos and reside in six different villages. They have houses and flocks, and raise wheat and other products of the soil."

Mr. Fraser: That is objected to as irrelevant, incompetent, and immaterial.

The Court: The same ruling.

Exception.

Mr. Rounds: We will pledge ourselves to find and present his document, but I may say that attached to the brief of the Government in the Supreme Court of the United States was a statement by Cato Sells, which was photographed, but which is rather hard to read from the photograph, and I have here a typewritten copy, and upon my promise to produce that I suppose I may read this as though I held the brief in my hand?

Mr. Fraser: Yes.

Mr. Rounds (reading):

"Department of the Interior, Office of Indian Affairs,

Washington, January 25, 1919.

"The data shown on the attached map, being a white print of the southern part of the map of the State of Arizona prepared under direction of the Commissioner of the General Land Office, has been compiled from the best data obtainable from the records of this office, the records of the Chief Irrigation Engineer's Office of this Service, and is based on actual surveys and examination in the field. It includes a portion of Yuma, Maricopa, Pinal and Pima Counties, Arizona, and shows projected thereon in color the Reserva-

tion created for the Papago Indians by Executive Order No. 2524, dated February 1, 1917. Within the area in Pima county, Arizona, designated generally on the land Office map as 'Santa Rosa Valley,' has been indicated by name the various villages of Papago Indians living in that valley. The location of these villages has been fixed as accurately as possible from actual surveys made on the ground, and the following data taken from a report by field officers of this Bureau shows the name of the Indian village, the number of dwellings therein and the number of inhabitants, where such information was obtainable, as of the calendar year 1914.

296	Name of village.	No. houses.	Population.
	Anegam	29	200
	Santa Rosa	24	400
	Ak-Chin	26	150
	Brownell	11	55
	Covered Wells	24	...
	Quanjote	20	200
	Sohabi	68	...
	Comobabi	45	143

"The arid condition of the country and the extreme scarcity of water during certain seasons, even for domestic purposes, have forced these Indians to abandon given villages temporarily in order to obtain water for themselves and their stock. They invariably return, however, to their former village home whenever local showers render a water supply again available. This rendered it difficult for the enumerator to obtain an accurate census of the population of each village, but the number of houses therein is taken from actual count on the ground. These houses, while clean, are but crude one-story affairs constructed of slim poles or ribs of the sahuaro cactus, plastered with adobe mud, having a roof of the same material, but quite thick. The houses are not built in true 'pueblo' style, rising tier on tier, but are scattered, frequently being several hundred yards apart. These facts have been verified from close observation made by me on the ground. The exterior limits of the claim of the so called 'pueblo of Santa Rosa' have been projected on the attached map, over the Santa Rosa valley, so as to include therein the Indian village of Santa Rosa. The location of this claim is not exact to that degree of finality which might be desired, as the starting point of the description given is exceedingly indefinite and the closing lines leave a hiatus difficult to reconcile. It has been prepared from the best data obtainable, and is believed sufficiently accurate to locate with approximate definiteness the claim presented in their behalf; this claim is but one of ten covered by alleged deeds and powers of attorney dated December 9, 1880, running from certain alleged 'Chiefs' of the Papago tribe to one Robert F. Hunter, which instruments do not appear to have been placed of record until June 2, 1914. The total area covered by these alleged deeds and powers of attorney cover over 2,000,000 acres of land in the Papago country in Pima and Pinal counties, Arizona.

CATO SELLS,
Commissioner of Indian Affairs."

Mr. Fraser: May I ask, Mr. Rounds, is that a part of the Government's brief?

Mr. Rounds: A part of the Government's brief, used in the Supreme Court of the U. S., and in the copy served on me was a photograph of two pages, which I have read here, with a copy of a map.

Mr. Fraser: That is objected to as incompetent, irrelevant and immaterial, my information being, if your Honor please, that the

297 Dept. of Indian Affairs used inadvertently, the maps which Mr. Martin used in advertisement for the sale of this property.

Mr. Rounds: We will be able to show just what that map was, and it has nothing to do at all with Mr. Martin's map.

The Court: The objection is overruled.

Mr. Fraser: And we note an exception.

The Court: Yes.

Mr. Rounds: I would like to read from the report of the Commissioner of Indian Affairs, to the Secretary of the Interior for the fiscal year 1915, printed at Washington, Government Printing Office, 1915, issued by the Dept. of the Interior, reading at page 60 (reading):

"For a long time I have desired to visit the Indians of the Southwest that I might closely study their problems. I have spent the last several weeks among the Apaches, Pimas, Papagos and the Indians along the Colorado River. About a week of this time was given to the Papago country. For many reasons I am convinced that the Papago Indians are among the most deserving of any people I have ever known. Their home for more than 200 years has been in the driest desert of the U. S. No branch of the Caucasian race could exist under such conditions, and I doubt if there is another Indian tribe that would do so. Under these circumstances they have demonstrated that the genius of necessity works out wonderful things. The Papagos have made their struggle unassisted, and their accomplishments, in view of their tremendous obstacles, are marvelous. Altogether they are entitled to more kindly consideration than they have received, and it is my firm purpose to show the Papagos that we are willing to help those who have so valiantly helped themselves. In this connection I should say that their neighbors, the Pimas, are as industrious and deserving people."

Mr. Fraser: That is objected to as incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Fraser: An exception, please.

The Court: Yes.

Mr. Rounds: Now I will read from a book entitled "New Trials in Mexico, by Carl Lumholtz, M. A., Member of the Society of Sciences of Christiania; Gold medallist of the Norwegian Geographical Society; Associe Etranger de la Societe de L'Anthropologie de Paris; author of 'Among Cannibals,' 'Unknown Mexico,' etc., with numerous illustrations including two color plates and two maps. New York, Charles Scribner's Sons, 1912." Reading at page 26 he says:

"It has been the good fortune of the Papagos to live in a country which the white man as yet has not found it profitable to exploit by cattle raising or, still less, by dry farming. Therefore, they have so far been left alone in their native country and besides
298 they have even come into possession of a few wells which the Americans dug in their efforts to redeem the land. These natives are thus better situated than most of the tribes of North America. The Papagos are above medium height, rather dark in color and of splendid physique. The women are inclined to be stout. They are a peaceful but at the same time a courageous people and show much intelligence. They are hospitable, as becomes a desert people, and if food is being prepared in the house when a stranger comes, some of it is offered to him, be he Indian, Mexican or American. In the central part of the Papagueria, especially in the large valley of Santa Rosa and the adjacent Quijotoa and Comobabi ranges they live happy days without much interference from the whites. Some of the summer rancherias astonished me by their extent of land fenced by wooden piles and poles, but in outlying districts they are forced to seek work from the whites, by whom they are much valued as laborers in the making of railroads, irrigation ditches and in mining. The part of the tribe that lives in Sonora is much more disrupted; they have lost most of their lands and are largely servants of the Mexicans, doing efficient work as vaqueros (cowboys) miners, etc. The Papagos also know how to 'dry wash' gold at the placer mines, many of which are found in Sonora, and the discovery of one or two large placer mines has been due to these Indians. The Papagos are by not means badly off, as a rule, and they manage to make a good living where, so far, the white man's efforts have failed. Their herds, adapting themselves to the arid conditions are increasing and making the Indian prosperous and comfortable. Good mules now carry burdens which his wife or he himself formerly had to toil under; cheese is made from the milk of their cows and sold or used for their own consumption, and, above all, they have wheat and maize in sufficient quantities to last them all the year round. They also have wheat and occasionally some head of cattle to sell, obtaining in return commodities of civilized life. The white man's kitchen utensils are being acquired, and the women have begun to find it more convenient to use flour than to grind the grain on the metate. No native race though keeping its language, can help changing its ideas under such conditions. In a very few years there will be no more interest attached to the Papago than to the native descendant of the once proud Aztec in the suburbs of the City of Mexico. Although the Papago in Arizona always insists upon speaking his own language still he is rapidly losing his aboriginal beliefs, customs and habits; even basket work, for which the women of the tribe were noted, is falling into decay. Both in Arizona and Sonora the Indians have completely adopted the white man's garments. Some old man may still be found in the more remote parts wearing his aboriginal apparel, consisting of a breech cloth around the loins, but this is getting to be an extremely rare sight, and it must be confessed that the ready-made blue over-

alls of the white laboring man of the West, the colored shirt, a picturesque neckerchief, and gray felt hat with straight brim are quite becoming to the young bucks with their suburb, lithe, and supple figures, with somewhat narrow hips. No man wears his hair long any more, but tatooing marks on the face are still seen on men and women of the former generation in the Santa Rosa Valley, where ancient customs and beliefs have been preserved longer than anywhere else. In this extensive valley are also found the most important rancherias."

Then at page 90 of the same book, which by the way, is the only one that had the honor of being quoted from in the Government's answer in this case,—at page 90, I just quote a sentence to show the dimensions of Santa Rosa (reading):

"One of the numerous sisters told me that in the rancheria of Santa Rosa, which was my next goal, there was much to be seen that would interest me, if I made friends with the principal men. She also had a house there, she said, which was at my disposal, and she gave us directions as to how to find it, for Santa Rosa was a big place. It is, in fact, the largest summer rancheria in the Papago tribe, and people from several clusters of winter habitations gather here to the number of about 500. The houses are scattered over an area of nearly 2 miles square. Its native name is Kuatshi (Big Peak). I entered this old fashioned rancheria with much expectancy of gaining further knowledge of the beliefs and customs of these people." Then he gives his experience in Santa Rosa. And then more fully at page 109, he says as follows:

"The Papagos in the Santa Rosa valley are less spoiled by contact with civilization than in any other part of their country. From my note book at this time I take the following remarks: 'I have never yet met with a cross Papago; they are always amiable. In my quest for specimens they smilingly admit me to their store rooms to inspect their fine granary baskets and other kinds of baskets and utensils, and allow me to look around inside and outside of the houses as much as I like. On the other hand, they have no tact; they seat themselves unconcernedly in a folding easy chair of mine, or go to the box in which I keep my collections and take out all the things to look at. They are always on hand at mealtimes; they dive with delight into the box of crackers set before them, and are very fond of coffee.'"

Mr. Fraser: The same objection, if your Honor please.

The Court: The same ruling.

Mr. Fraser: An exception, please.

Mr. Rounds: I would like to read in evidence from page 383 of House Executive Document for 1862-63, Vol. 2, No. 1, being a part of a statement from Indian Agent Collins, dated Oct. 10, 1862. He says:

"The Pueblos of Western Arizona are known by the names Pimos, Papagos, and Maricopas. Like the Pueblos, which are interspersed

among our people in populated parts of New Mexico, they are much more than semi-civilized, and are engaged in all the industrial pursuits necessary to supply the wants of people in their condition of life: The lands which they occupy are represented as being exceedingly fertile and well cultivated."

Mr. Fraser: That is objected to for the same reason as before, if your Honor please.

The Court: Overruled.

Mr. Fraser: May we have an exception?

Mr. Rounds: Beginning at a later time, and going back I read from report of the Secretary of the Interior, 3rd Session, 42nd Cong. Vol. 1 1872-1873, from the report of Gen'l Francis A. Walker, Com. of Indian Affairs, under the heading "Papagos." That is on page 445. He says:

"These Indians, numbering about 5,000, are of the same class in some respects, as the Pueblos in New Mexico, living in villages, cultivating the soil, and raising stock for a support."

The Court: Mr. Rounds, there has been a good deal offered here on that phase of the matter. I have not heard any suggestion that there is any disagreement on the part of the defendants in that regard, as to the character of these people; that is, that they are friendly Indians and fairly industrious. How is that?

Mr. Fraser: I think I would be disposed to concede all that, if your Honor, please.

(Continuing reading:)

"These Indians have no treaty relations with the U. S., and receive no assistance from the Government."

Mr. Fraser: I object to that as incompetent, irrelevant and immaterial.

The Court: It is along the same line?

Mr. Fraser: Yes; and I object on the same ground.

The Court: The objection is overruled.

Mr. Fraser: And may I note an exception?

It was here agreed that the Gadsden Treaty, signed Sept., 1853, and ratified June 30, 1854, became the law in 1854.

Mr. Blair: I read from the report of the Commissioner of Indian Affairs, accompanying the report of the Secretary of the Interior for the year 1856, being a report of the Superintendent of Indian Affairs at Santa Fe, dated Sept. 30, 1856, saying:

301 "From the most reliable information in my possession, we have acquired, by the Gadsden Treaty with Mexico, about 5,000 Indians in addition to those heretofore under the charge of this superintendency. A large portion of this accession to our Indian population consists of pueblos, situated near Tucson; and, as a military post is about being established in that vicinity, and that section of this territory is now being rapidly settled by our people,

I would respectfully recommend that an additional agent or sub-agent be appointed to take charge of the interests of these Indians. They are removed to a distance of at least 300 miles from any other agency, and more than 500 miles from the pueblo agency. The Gila Apaches commit frequent depredations upon them, and unless they have an agent at hand to attend to their interests, their rights may be trampled upon. This agent could also take charge of the neighboring Gila Apaches. These recently acquired pueblo Indians are represented to me as being in a similar state of civilization as the other pueblos of this territory. They reside in permanent villages, have comfortable houses built of adobes, have flocks and herds around them, and rely upon the cultivation of the soil for a subsistence—raising wheat, corn, cotton and other vegetables. They are divided into six pueblos or villages, but whether or not they hold their lands under grants from the former governments of their country I am not informed; but presume that they do, as they have been permanently settled for a great number of years."

He exactly forecast, I think, the attitude of our courts.

Mr. Fraser: I object to that as incompetent, irrelevant and immaterial, and opinion evidence.

The Court: The presumption, I think, is subject to objection. The other goes in subject to the objection.

Mr. Fraser: And may I have an exception?

The Court: Yes.

Mr. Rounds: I read just one paragraph from a book published in 1898, called, "Soldiers of the Cross. Notes on the Ecclesiastical History of New Mexico, Arizona and Colorado, by the Most Reverend J. B. Salpointe, D. D. Archbishop of Tucson, formerly Archbishop of Santa Fe, New Mexico." I read from page 181.

The Court: Is that the Bishop who is said to have brought the parties together here?

Mr. Rounds: Yes, sir. He says:

"San Xavier and Tumacacori were the most important missions of Arizona at the time of the expulsion of the Franciscans. Their priests visited Tubac, Tucson and other pueblos of the Papagos at stated times."

Mr. Fraser: That is objected to for the same reason, if your Honor please, as incompetent, irrelevant and immaterial.

302 The Court: You do not challenge the book as one speaking by authority?

Mr. Fraser: No; I think not in this case.

The Court: The objection is overruled.

Mr. Fraser: And may we have an exception?

Mr. Rounds: I read from the Final Report of Investigations Among the Indians of the Southwestern U. S., Carried on Mainly in the Years 1880 and 1885, Carried on by Adolph Bandelier, Being Part 1 of the Papers of the Archaeological Institute of America, Series III, 1890. At page 72 he says:

"The Papagos came in contact with the Spaniards in the latter half of the 17th century. It was the celebrated Jesuit Father Eusebius Kino, who made the Spaniards first acquainted with them. They were not hostile, only shy, in the beginning. Father Kino, in his letter to the Padre Visitador Horatio Polici, dated Sept. 22, 1698, says that the Papagos consist of, 'more than forty rancheries both large and small, all of people very friendly, docile and so affable that everywhere they received us with prepared houses, with crosses and arches placed, and with much of their food of corn, beans and squashes, melons and pitahayas, and of their game, hares, etc., and with many dances and songs by day and night.' * * * The ethnography of Arizona has not much changed since about the year 1600. The main changes which have taken place are due to the Apaches in the last half of the 17th Century, and to the settling of the country since its annexation by the U. S. The Apaches caused the Sobaypuris (in no way different from the Pimas) to give up their homes on the San Pedro and to merge into the Papagos."

Then on pages 102 and 103 he says:

"Along the San pedro Valley, the Sobaypuris had their settlements, which extended as far north as within a short distance of the Rio Gila. West of them commenced the range of the Papap-Otam, or Papagos, whom we have already met in northwestern Sonora, and who roamed over rather than resided in the southwestern corner of Arizona to within a short distance of the Gulf coast. The country is so bleak, so destitute of attractions for village Indians, that no large population could remain there for any length of time so long as general safety was not firmly established. An agricultural stock could prosper in these regions only with a great deal of patient toil. Therefore, the scattered remains of more permanent villages, with artificial tanks, mounds of houses constructed of clayey marl and sometimes more than one story high, which are met with here and there throughout the Papagueria are evidences of a period of relative quiet that has long since disappeared."

Then at pages 198 and 199, he says:

"The Spanish government recognized at an early day that the Indian was a big child, who should be elevated very gradually, and nursed very carefully, in order not to warp his nature or ruin it. * * * It was impossible to press them at once into the mould of Spanish organization; therefore their own original form of Government was maintained, and only such modifications made as became necessary to assure the supremacy of Spain in case of need. This policy perpetuated among the sedentary Indians the communal system known as the pueblo type in New Mexico. Under this order of things each tribe retained its jurisdiction, and became responsible for the misdeeds of the individual. The pueblos have disappeared, as such, in the Mexican part of the southwest, among the Opatas and Pimas of Sonora and the Christianized Tarahumares of Chihuahua. The old organization still prevails with the Yaquis, the wild Tarahumares of Chihuahua, and the Mansos and Piros of El Paso del

Norte. The so-called 'Reform Laws' of 1857 nominally abolished the ancient system in Mexico, much to the regret of the Indian, and even of some of the prominent originators and fosterers of the measure. That the pueblo system still rules the New Mexican village Indians and the Pimas and Maricopas of Arizona, is well known."

Then pages 201 and 202, he says:

"The communal system of land tenure was legally established by the granting of community lands to each settled tribe—lands inalienable except through consent of the whole tribe and with permission of a set of authorities especially entrusted with the care of the Indian's interests. (See *Recopilacion*.) This perpetuated communism of land holding, but did not exclude individual tenure, within the limits and under the restrictions of communal rights."

And then on page 206, he says:

"In the southwest, the establishment of community grants is of comparatively recent date. A peremptory order of the king, dated 1682, laid the foundation of the so-called pueblo grants of New Mexico. In Sonora, the papers and deeds of the Opatas date back to the beginning of the 17th Century. (For instance, the grants of the pueblos of Sinoquipe and Banamichi.) As long as the Jesuits were almost the sole white occupants of that state, it was superfluous to execute the royal dispositions in regard to Indian lands, as nobody was near or far who could encroach upon the native's possessions. In Chihuahua, El Paso del Norte excepted, the unsettled nature of the aborigines rendered the community system impracticable except in the shape of "reductions"—

That is a word we are going to hear quite a bit about. (Continued reading:)

"—except in the shape of 'reductions,' that is, aggregations, sometimes of several stocks, around a mission, as center and pivot of life. To such reductions an area of communal land was assigned. (See *Recopilacion*, Vol. II lib. vi, tit. iii etc.) * * * At last, however, Spanish ideas prevailed to a great extent, and by allowing permanent

tribes independent jurisdiction a compromise was effected, 304 the result of which has been that, as towards outsiders, the pueblo recognizes the action of law, while the law in turn tacitly acknowledges the right of home rule in his favor. This tacit arrangement prevails today with the pueblos and it has been legalized in the first statutes of New Mexico, which declare the pueblos to be bodies corporate, corporations having their own jurisdiction over their members."

Then on pages 313 and 314, he says:

"A close study of the people of each village would, in addition to the differences between linguistic stocks, reveal many local varieties. But, on the whole, there is a fundamental similarity between all the pueblos in manner, customs, and beliefs, that is very striking. Their position towards the whites is the same everywhere, and, as far as mode of life is concerned, there is the same tendency

to huddle together in winter for protection and shelter, the same inclination to a change of abode in summer, in every pueblo from Taos to Isleta, from Nambe to Zuni and the Moquis. In summer, as is well known, the pueblos are nearly deserted. The Zunis move to Pescado, to Aguas Calientes, to Nutria, etc., at distances from 10 to 20 miles from their villages; the Acomas to Acomita, 14 miles away; all the other tribes emigrate into their fields leaving but a few families at home, until the time comes for housing the crops. Then the return begins; one after another of the summer ranches are abandoned; their inmates move the few household utensils they have taken with them in spring back to their original quarters; and the pueblo quiet and almost forsaken during the period of life in physical nature, becomes the seat of animation while nature rests. These annual changes in the abodes of sedentary tribes are interesting in two ways. They show the facility with which the village Indian, for the sake of subsistence, still changes temporarily his home; they also explain many features in archaeology."

Mr. Fraser: I object to that as incompetent, irrelevant and immaterial, and not showing any fee title, or any title to the lands.

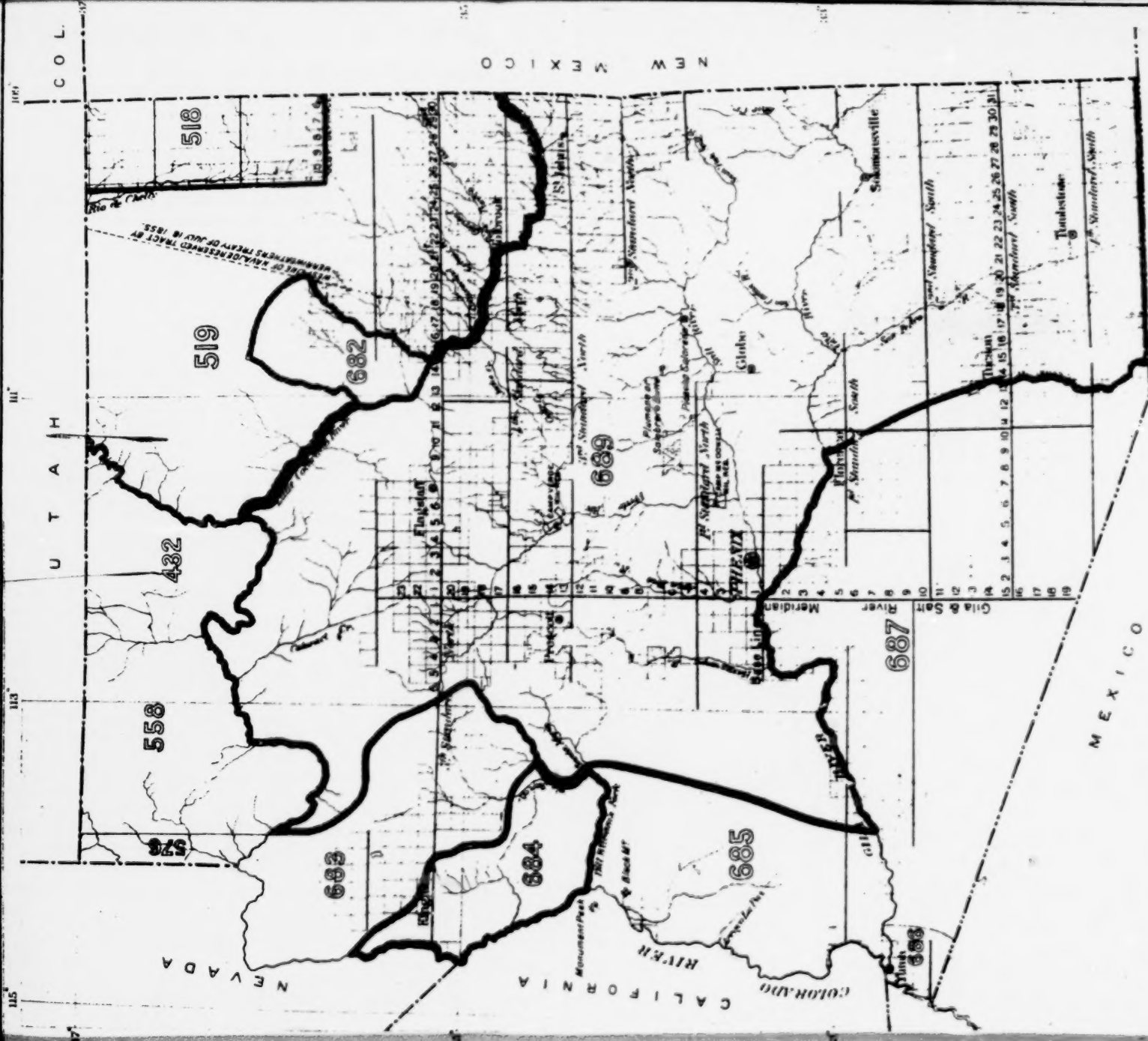
The Court: The same ruling.

Mr. Fraser: We note an exception.

Mr. Rounds: I read from the 18th annual report, Bureau of American Ethnology, 1896-97, by J. W. Powell, Director, 1902, published Washington, Government Printing Office. Under the following heading, appears a long table, covering many pages, the heading being, "Schedule of Indian Land Cessions" indicating the number and location of each cession by reservation, for the Indian tribes, from the organization of the Federal Government to and including 1894, together with the descriptions of the tracts so
305 ceded, or reserved, the date of treaty, law or executive order governing the same, the name of the tribe or tribes affected thereby, and historical data and reference bearing thereon. And there appears, on page 922 of that schedule the following: Under the head of "Tribe" is "Papagos, Pimas and Maricopas." Under the heading "Description of cession or reservation" are the words, "country claimed by them at beginning of their relations with the U. S. Under the heading of "Historical Data and Remarks" is:

"No treaty of purchase was ever made with these tribes, who have a common origin. The U. S. took possession of their country, the boundaries of which are shown on Arizona Map No. 1. Reservations were, however, assigned them, upon which they were concentrated, known as the Papago, Gila River, Gila Bend, and Salt River Reserves, all of which are shown on Arizona map No. 2."

The number designating this tribe on the map of Arizona No. 1, is No. 687. Map No. 1, above referred to, shows the tract to be bounded on the south by the Mexican line, on the east by the Santa Cruz River, on the north by the Gila River and on the west by the Colorado River. Said map was here offered in evidence and admitted.



To the foregoing the defendant objected; grounds, incompetent, irrelevant, and immaterial; objection overruled; exception noted.

(Here follows map marked page 306.)

Miss Chamberlin resumes stand.

Noticias Estadisticas del Estado de Sonora, a book published in Spanish, by Jose Francisco Velasco, Mexico, Imprente de Ignacio Cumplido, 1850, is a recognized geographical and historical authority in Mexico, written by Jose Francisco Velasco, an historian.

Mr. Fraser: That is sufficient.

Mr. Rounds: I read the translation from pages 160 and 161.

"The Papagos of the Gila River are better and more industrious. Firstly, because these people have never failed the government; of this they have given different proofs, one of them being that they did not care to accept the invitation that the first mentioned ones

(the Pimas) made them, that they should take part in their rebellion and secondly, because their rancherias are stable, that is to say, they do not go roving about like those others;

consequently they have lands sown with wheat, corn, frioles, garvanzas, and lentils, though only for their maintenance. Moreover, they plant cotton from which they make the sheets we call "Pimas," very firm and thick, for the purpose of protecting themselves in the winter. Their habitations are houses of adobe, formal though small; it is very rare that a robber comes among them, and in general they are as faithful, as hospitable to the travelers or strangers who arrive at their pueblos. * * * Those (rancherias) of the Gila are permanent, as has been indicated, and although smaller in number than the first (Pimas), they are of large population, it being incontestable that the Papageria is composed of some thousands of Indians, which surely exceed the Pimas, Altos and Bajos and the Opates * * *. The rancherias which have made themselves known as the most stable of the Papagos in the part east of the road to Alta, California, are the following: That of Zoni, Cubic, Quitovac, Sonoita, Tachilta, Raiz del Mezquite; Tecolote, Santa Rosa, Ati, Cavorquenos. Of the above rancherias some are on the road to Alta, California itself, as Quitovac and others at short distances from its sides. The other rancherias do not keep a fixed residence, as has already been said; but although they are ambulatory, they always return to their primitive localities. The rancherias of the Gila are less than the above mentioned ones but they have always been established and large which form each one a pueblo in community, with their fields, cows, and sheep."

Mr. Fraser: We object to that as incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Fraser: We note an exception.

The Court: Yes.

Mr. Rounds: I will read from a book published in 1849 Noticias Estadisticas de Sonora y Sinaloa, compiladas y amplificadas para

la Comision de Estadistica Militar; por el Lic. D. Jose Augustin de Escudero * * * Mexico, 1849. This is a statistical review of Sonora and Sinaloa, compiled and amplified for the Commission of Military Statistics by Lic. D. Jose Augustin de Escudero.

Miss Chamberlain: The above is a document made for the use of the government and the book is the basis for the work of a very famous man in Mexico, Orozco y Berra.

Mr. Rounds: Reading the translation at pages 142 and 143, under the heading of "Pimas or Papagos," he says:

"The nomadic villages or establishments of these natives are in the part most east and to the north of the State of Sonora, and
308 enjoy generally a temperate climate, although those from the Magdalena to Oquitoa are, with very little difference, as hot as Buena Vista and Guaymas. These Indians are the most backward in civilization, and those who have least accustomed themselves to intercourse with the whites; notwithstanding, those who live in the pueblos, principally of the San Ignacio River, are found less backward than the others, and with more marked propensities for the pleasures of society, trade and commerce with civilized peoples, among whom they live peacefully. They are divided into Pimas, Altos and Bajos, who have been conquered and reduced to pueblos since the 16th century, of which there are 7, each one governed by an old man, and all by the general of the nation, whom another time the Indians had named, and who had been confirmed by the intendente, to whom he presented himself in order to receive a garment of ordinary cloth and a laton with a hilt of tin, ignorant nevertheless among themselves of what was actually done. They are farmers and hunters; mortal enemies of the Apaches and Yumas, against whom they make a perpetual war. This nation is phlegmatic and lazy; but honest and virtuous by nature, in a manner that the faithful punctuality in its promises both of its governors and of individuals in particular and the most creditable justice in its judges and magistrates, are proverbial among those who speak the Cora dialect. Many persons who have been in the pueblos of the Gila and who have made the journey from Tubutama to the Californias, are able to give testimony to the hospitality of the Pimas, and how they are also escorted by the Papagos of Caborca and Tubutama, in order to pass them with baggage to the other side of the river. A violence or robbery has never been heard of, notwithstanding that the travelers are very frequent who pass by the pueblos of the Gila, where a multitude of inhabitants of the predios of Tucson, Santa Cruz, and San Ignacio River gather at a kind of fair which they have annually, in which these peaceful natives exchange their cotton cloths, called Pimas mantas, which are coverlets, white and beautiful; some blankets called coras or coritas, and the Yuma or Apache Indians which they had made prisoners. These are baptized, adopted and educated by the buyers and form a large part of the domestic service in the Sonoras."

Mr. Fraser: I wish to make the same objection to all this testimony as incompetent, irrelevant and immaterial.

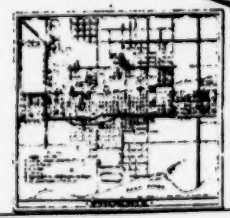
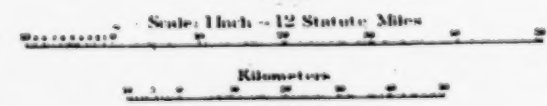


*Papago Reservation as Established by Executive Order
- Feb. 1, 1917 -
Claim of Santa Rosa Indians*

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
FRED DENNETT, COMMISSIONER.

STATE OF ARIZONA

Pl. 218
Compiled from the official Records of the General Land Office and other sources
under the direction of
L.P. BERTHRONG
Chief of Drafting Division G.L.O.
1912



DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

WASHINGTON

January 25, 1919.

The data shown on the attached map, being a white print of the southern part of the map of the State of Arizona prepared under direction of the Commissioner of the General Land Office, has been compiled from the best data obtainable from the records of this office, the records of the Chief Irrigation Engineer's Office of this Service, and is based on actual surveys and examinations in the field.


It includes a portion of Yuma, Maricopa, Pinal and Pima Counties, Arizona, and shows projected thereon in color the Reservation created for the Papago Indians by Executive Order No. 2300, dated January 14, 1916, as modified by Executive Order No. 2524, dated February 1, 1917. Within the area in Pima County, Arizona, designated generally on the Land Office map as "Santa Rosa Valley", has been indicated by name the various villages of Papago Indians living in that Valley. The location of these villages has been fixed as accurately as possible from actual surveys made on the ground, and the following data taken from a report by field officers of this Bureau shows the name of the Indian village, the number of dwellings therein, and the number of inhabitants, where such information was obtainable, as of the calendar year 1914:

Name of Village.	No. Houses.	Population.
Anegan	29.	200.
Santa Rosa	24.	400.
Alk Chin	26.	150.
Browmell	11.	55.
Covered Wells	24.	---
Quajote	20.	200.
Cobabi	65.	---
Comobabi	45.	143.

The arid condition of the country and the extreme scarcity of water during certain seasons, even for domestic purposes, have forced these Indians to

abandon given villages temporarily in order to obtain water for themselves and their stock. They invariably return, however, to their former village home whenever local showers render a water supply again available. This rendered it difficult for the enumerator to obtain an accurate census of the population of each village, but the number of houses therein is taken from actual count on the ground. These houses, while clean, are but crude one-story affairs constructed of slim poles or ribs of the schuaro cactus, plastered with adobe mud, having a roof of the same material, but quite thick. The houses are not built in true "Pueblo" style, rising tier on tier, but are scattered, frequently being several hundred yards apart. These facts have been verified from close observation made by me on the ground.

The exterior limits of the claim of the so called "Pueblo of Santa Rosa" have been projected on the attached map, over the Santa Rosa Valley, so as to include therein the Indian village of Santa Rosa. The location of this claim is not exact to that degree of finality which might be desired, as the starting point of the description given is exceedingly indefinite and the closing lines leave a hiatus difficult to reconcile. It has been prepared from the best data obtainable, and is believed sufficiently accurate to locate with approximate definiteness the claim presented in their behalf. This claim is but one of ten covered by alleged deeds and powers of attorney dated December 9, 1880, running from certain alleged "Chiefs" of the Papago tribe to one Robert F. Hunter, which instruments do not appear to have been placed of record until June 2, 1914. The total area covered by these alleged deeds and powers of attorney covers over 2,000,000 acres of land in the Papago country in Pima and Pinal Counties, Arizona.



Commissioner of Indian Affairs.



The Court: Overruled.

Mr. Fraser. And we may note an exception?

The Court: Yes.

Mr. Rounds: We now have here the map spoken of the other day. I offer in evidence a photographic copy of a map attached to the brief of the defendants in the Supreme Court of the U. S., and the statement of Commissioner Sells put in evidence the other day and entitled "Papago Reservation as established by executive order Feb. 1, 1917, claim of Santa Rosa Indians, Dept. of Interior General Land Office, Fred Dennitt, Commissioner, State of Arizona, 1912."

312 Whereupon said map was received in evidence marked Plaintiff's Exhibit 18, and is as follows:

(Here follows Plaintiff's Exhibit 18, marked pages 309, 310, and 311.)

Mr. Rounds: I offer in evidence a map, Dept. of the Interior General Land Office, Fred Dennitt, State of Arizona, compiled from official records State of Arizona and other sources, 1912, which I think will appear, by comparison with the map last offered an official map

on which the location of the village of Santa Rosa and of the
313 claim has been superimposed, in order to make the map that is put in evidence as "Plaintiff's Exhibit 18" clear. You will note that there are particularly on this piece of paper some ink marks, and either counsel will have the right to substitute, and we will endeavor to substitute a copy of the map without any ink marks.

Whereupon said map last offered was received in evidence and marked as Plaintiff's Exhibit 19. To which the defendants objected on the same ground; overruled; exception noted. Plaintiff's Exhibit 19 is the same map as Defendants Exhibit 18, except that the lines drawn to show the boundaries of the so-called Santa Rosa are on Exhibit 18 and absent from Exhibit 19.

Miss Chamberlin: Alexander de Humboldt's Political Essay on the "Kingdom of New Spain," dated New York, 1811, is an authoritative historical work.

Mr. Rounds: I read a few words from pages 206 and 207 of that work.

(Reading:) "The Indians who live in the plains adjoining the Casas Grandes of the Rio Gila, and who have never had the smallest communication with the inhabitants of Sonora, deserve by no means the appellation of Indios bravos. Their social civilization forms a singular contrast with the state of the savages who wander along the banks of the Missouri and other parts of Canada. Fathers Garces and Font found the Indians to the south of the Rio Gila clothed and assembled together, to the number of two or three thousand, in villages which they call Utricut and Sutaquisan, where they peaceably cultivate the soil. They saw fields sown with maize, cotton and gourds. * * * There are reckoned in the province of Sonora one city (ciudad) Arispe; two towns, (villas) viz: Sonora and Hostemuri; 46 villages, (pueblos,) 15 parishes, (paroquias) missions, 20 farms, (haciendas,) and 25 colleges, (ranchos)."

By Mr. Rounds:

Q. Miss Chamberlin, I show you a book called "Rudo Ensayo, Tentative de una Prebencional Description Geographica de la Provincia de Sonora, sus Terminos y Confinos." Por un Amigo del Bien Comum. 1761-2 (Republished in Facsimile, St. Augustine, Florida 1863). You may state, if you know, the character and authority of that book. A. The Rudo Ensayo is a classic among Spanish writings concerning Mexico, New Mexico and Sonora, written in about 1761, by the Jesuit Father Juan Mentig.

Q. Will you explain why it is it bears so late a date, Miss Chamberlin? A. It was one of those manuscripts lost, and was not recovered and never translated until 1863 by Buckingham Smith.

Mr. Rounds: I will read from page 100 of that work, as follows:

"We then continued our journey to San Xavier del Bac, 30 long leagues distant from Santa Maria. This is the last mission in Pimeria, 33 degrees 25 minutes in latitude and 263 degrees of longitude; and is bounded by the villages which the Papagos have established on the sterile plains to the West."

Then skipping some, he continues:

"These are the 29 Missions with 73 pueblos and various villages of the Christian Indians. * * * The upper Pimas occupy 22 pueblos, composing 8 Missions."

Then on pages 167 to 173:

(Reading:) "The civil government of the pueblos of the Indians consists in a Governor, an Alcalde, Alguacil and Topile. The Governor is selected by the same Indians according to the preference of their Padre Ministro, who by the Royal Laws inserted at a Providencia Real of the Audiencia of Guadalajara on the 25th of September, 1686, and a dispatch from his excellency Senor Viceroy Don Juan Francisco de Guemes y Horcasitas, its date Mexico, Nov. 25. 1746, directs them in such an election, in order that they are certain to give their votes to someone whose life and customs does not serve them as hindrance, but only as bridle, in respect to evil, and as stimulant and spur for that which is good. The Governor elect himself does the same in placing the Alcalde, and these with the Padre Ministro, still near all the pueblo, and upon the preference of all, appoint the Alguacil and Topile. In the same manner is made the Captain of War. This is the senate, or cabildo of these Indian republics, which govern themselves in politics thus in order, for their own conservation, maintenance, and Royal service, as for their church and Padre Ministro. And so the Governor with the Alcalde, etc., explain their contracts, and questions which occur, punishing delinquents, principally if it is a public wrong, with the punishment of one or two dozen lashes, conformably to the seriousness of the crime."

Mr. Fraser: I object to that as immaterial, for the reason that there is no connection shown, or that the present plaintiff is affected.

The Court: It is some evidence of a form of government existing in that country. It may go in.

Mr. Fraser: An exception.

Q. Miss Chamberlin, can you state what authority, if any, is had by a book entitled "Teatro Americano, Descripcion General de los y Provincias de la Nueva Espana, y sus Jurisdicciones," by D. Joseph Antonio de Villa Senor y Sanchez, Mexico—1748?

A. That again is one of the source books to which students of history of the American southwest and Mexico must go.

Mr. Rounds: I read from Vol. 2 pages 403 and 404:

"In the month of October, 1744, there was solicited by apostolic zeal of the Jesuit missionaries, the expedition to explore the Moqui provinces, and although it was not attained, by the said motives, at least there were discovered and entered some of the lands until then only penetrated, because of Padre Jacob Sedelmair, a Jesuit missionary, having gone from Tubutama, and crossed through the great lands of the Pimas Altos, called Papabotas,—"

By Mr. Rounds:

Q. Can you tell me what Papabotas refers to?

A. Papabotas refers to the Papagos.

Mr. Rounds (continuing reading): "—among whom, on account of having many Christians among the pagans, there are tractable and domestic people; they live in dry and sterile lands, without more water than that which gathers in some short acequias or cisterns. From the place of Tubutama to the Pimeria of the Gila River there is a distance of 80 leagues to the northern part, quarter to the northeast. There are in it three rancherias, so large that the multitude which occupies them is uninvestigated; among them are some Christians, but the greater part of them are gentiles, they have as well the excellent quality to be enemies of the Apaches, and very friendly to the Spaniards, and generally they are gentle and domestic through the continuous work of the Jesuits, zealous in their catechism, in whose ministry they have exercised themselves for 50 years in this part."

Mr. Fraser: I object to that for the same reason that the author is not an authority. I might point out, your Honor, that so far we have had no evidence of the official position, knowledge or opportunity for investigation or anything else passed by these authors, and their work seems to be resorted to simply in default of anything else; and it seems to me that if there is anything known on these points it should be brought out before a testimony is admitted.

The Court: One of these seems to be the chronicles of travelers or observers in that country, and the witness testified that was a high authority. I am letting it in, and it may dovetail a great deal with other evidence. I don't know. We will see about that.

Mr. Fraser: An exception please.

By Mr. Rounds:

Q. I show you two volumes, entitled "Kino's Historical Memoir of Pimeria Alta, a Contemporary account of the Beginnings
316 of California, Sonora and Arizona, by Father Eusebio Francisco Kino, S. J., Pioneer Missionary Explorer, Topographer and Ranchman, 1683-1711, published for the first time from the original manuscript in the archives of Mexico; translated into English, edited and annotated by Herbert Eugene Bolton, Ph. D.; Cleveland, 1919, and published as one of the semi-centennial publications of the University of California." Will you tell me what you can about the author and the books?

A. Father Kino's account is probably the most famous of the early days of the Jesuits, and this account was lost for many years, and Professor Bolton, who is a well known student of history, found the manuscript in the archives of Mexico City, and has translated it and published it. This account has been quoted, and the material taken from it ever since Kino's days by the men who were with him, Manje, and many others. So it is a thing that students have long wished to have.

Mr. Rounds: Reading from Kino's Historical Memoir of Pimeria Alta, 1683-1711, page 250:

"In the first journey or mission, which, coming from the Rio Grande, from the north to the south, I made to these coasts of the Sea of California, where they had never seen any white face or Spanish person in the 80 leagues of coast which I traveled, more than 5000 Indians being subdued, 435 infants were presented to me to baptize in the great rancheria alone which we named San Francisco."

There is a foot note, "San Francisco del Adid."

(Continuing reading:) "On the 4th of Oct., after mass, they gave me 102 little ones to baptize; and in the afternoon at the neighboring rancheria which followed it, and which we named San Serafin, they gave me 60 others. When, 2 years afterwards, the father visitor, Antonio Leal, in his holy and apostolic visit, penetrated with Father Francisco Gonzalvo and me, more than 80 leagues northward and went as far as San Augustin, and returned by the westward, he arrived at San Serafin and San Francisco, solemnizing several baptisms in different places, greatly consoling and edifying all this extensive Pimeria and its neighboring nations; and at San Serafin and San Francisco, the little ones whom I had previously baptized received his reverence with tiny crosses in their hands."

Then reading from page 187:

"In the single rancheria of San Francisco del Adid, to which we gave the name of this most glorious patriarch and great patron, San Francisco Xavier (Bolton says Asis instead of Xavier), inasmuch as in it on the 4th of Oct., we kept this holy day, they gave us after the mass of the saint 102 little ones to baptize."

317 He continues:

"In the afternoon we went 2 leagues farther, to another rancheria, which we named San Serafin, and they gave us to baptize 65 other little ones."

Then reading again at page 207 of Vol 1, he says:

"After 28 leagues' journey and having passed by various rancherias, all of very friendly and very docile people, we arrived at the rancheria of San Serafin del Actim. There came out to welcome us more than 20 justices who had assembled, and about 20 boys, who received us on their knees, with crosses in their hands, that they might give them to the father visitor; and afterward we were welcomed by more than 400 men and many women drawn up in a very long line with their little ones already baptized, 2 years before. They comprised about 1200 souls. In the afternoon we passed on to San Francisco del Adid."

Then there is a foot note as follows: Manje calls this San Francisco del Ati.

Q. Can you tell us who Manje was? A. Manje was an army officer who went with Kino on his trip up into the Pimeria Alta.

Mr. Rounds (continuing reading:): "In the afternoon we passed on to San Francisco del Adid, where we were received by 200 men and about 800 souls, among them being many of the 102 little ones whom they had given me here to baptize on the morning of the day of San Francisco, the 4th of Oct., 2 years before. All were much pleased to hear the word of God; and at night there was formed a circle of 25 governors, among them being the principal one of the four cocomaricopas who had come to see us, who, with the governor of Nuestra Senora de los Dolores, spoke with fervor of their eternal salvation, and the father visitor heard that new language for the first time."

Then reading again from page 205, of Vol. 1, he continues:

"On the 29th, after 10 leagues journey, we arrived, two hours past noon, at the great rancheria of San Xavier del Bac of the Sobaipuris, more than 40 boys came forth to receive us with their crosses in their hands and, there were more than 300 Indians drawn up in line, just as in the pueblos of the ancient Christians. Afterwards we counted more than a thousand souls. There were an earth roofed adobe house, cattle, sheep, and goats, and maize and the 36 relay pack animals. The fields and lands for sowing were so extensive and supplied with so many irrigation ditches running along the ground that the father visitor said they were sufficient for another city like Mexico. On the 30th the Governor of El Ocotam, to the west, named Tocodoy Onigam, came to see us with 10 other Indians. And being questioned, he told is by means of

kernals of maize that he had in his rancheria 266
318 souls." * * *

Then again, he continues as follows:

"May 1, 1700. On the first day of May in the afternoon and at nightfall, many justices, captains, and governors arrived from the West, from San Francisco del Addi, and from San Serafin, some coming 40 and 50 leagues. We talked with them a great part of the night, as we had done the night before, in regard to the eternal salvation of all those nations of the West and Northwest." * * *

Then from Vol. 2, page 267:

"The natives of these new conquests and new nations are industrious Indians, who are docile, affable, and very friendly, and at the same time warlike and valiant, able to defend themselves against their enemies and to fight against our adversaries, the enemies of this province of Sonora. * * * These natives, particularly those of this extensive Pimeria, have very good fabrics of cotton and of wool; also many nicely made baskets, like hampers, of different sizes, many colored macaw feathers, many deer and buffalo hides, and toward the sea coast much bezoar, and the efficacious contrayerba, and in many parts the important medicinal fruit called Jojoba."

Then on page 269, the following:

"Last year during the journey and visit of Father Visitor Francesco Maria Piccolo to the Pimeria, more than 30 governors, captains, alcaldes, fiscales, etc., came from the interior all on horseback."

Mr. Rounds: I offer in evidence from the book in question, "The earliest print of Kino's map of Pimeria Alta, 1705 with leave to substitute another copy, either a duplicate or a photograph.

Mr. Fraser: Up to this point I wish to object to this evidence as irrelevant, not questioning the authority of Father Kino as an explorer, and the right to have his evidence in on that ground, but in that it has no bearing on the title of the present plaintiff.

Mr. Rounds: This, of course, is a document. This is a photograph of the particular old map showing the San Francisco and San Serafin in the particular location, and we shall follow along and show that San Francisco and San Serafin follow along in that location until San Francisco changes over to Santa Rosa in that same location.

The Court: It may go in.

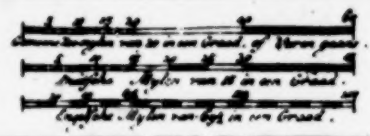
Mr. Fraser: An exception please.

The Court: Yes.

Said map was introduced in evidence as Plaintiff's Exhibit 19-A.

(Here follows map marked page 319.)

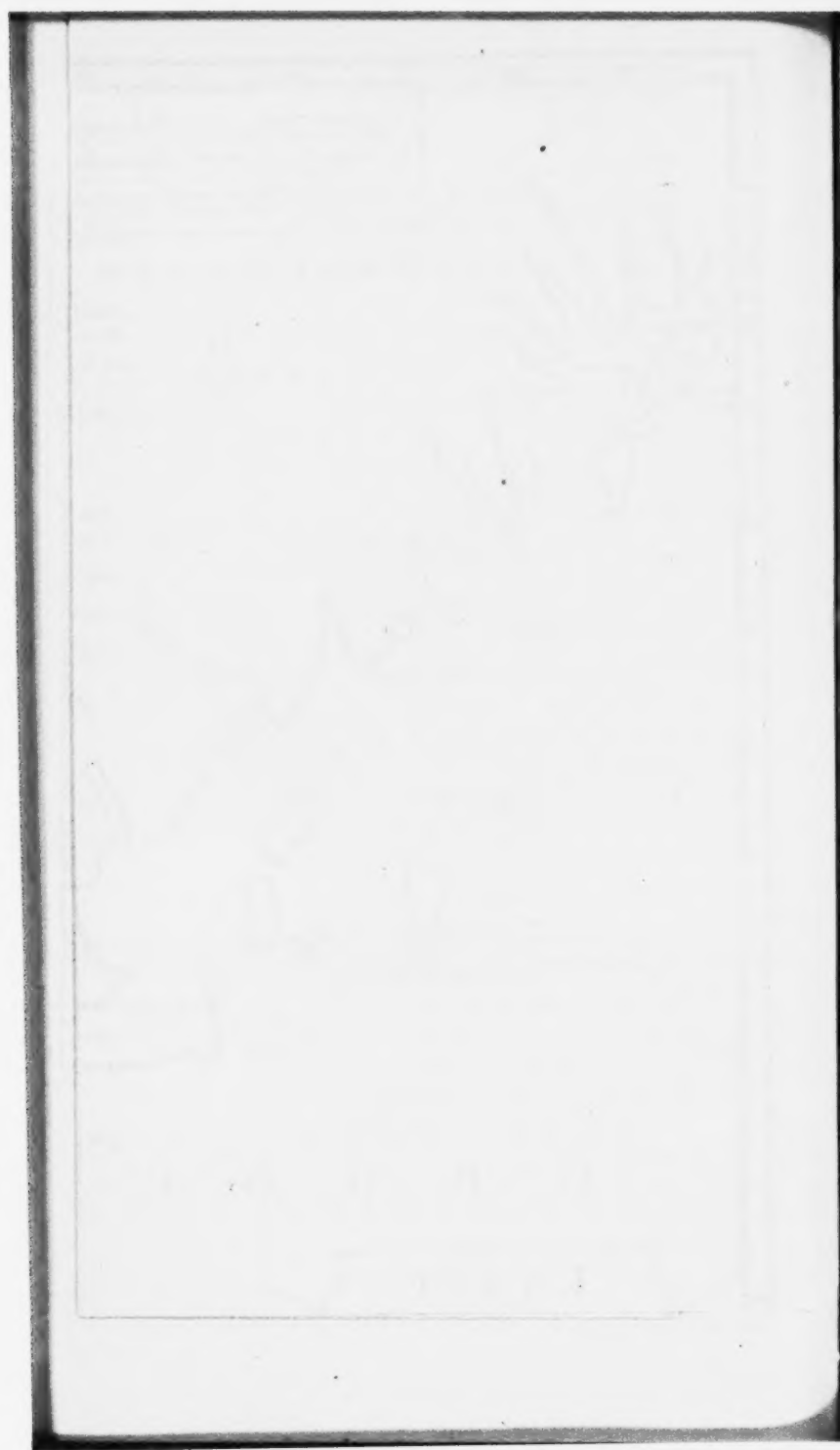
320 Whereupon plaintiff offered in evidence a map from Herbert Eugene Bolton's edition from Father Kino entitled, "Map of Pimeria Alta, 1687-1711, and compiled by Herbert Eugene Bolton. Said map was fastened in the book and was introduced to show that



KAART
van het
Westelyk Gedeelte
van
NIEUW MEXICO
en van
CALIFORNIA
Volgens de laatste Ontdekkingsen
der Jesuiten en anderen.
te AMSTERDAM by
J. VAN DIJK.

Pl. En. 17-6

ZUID ZEE



Bolton attempted to locate San Francisco del Adid. To which the defendants objected on the ground that it was not Father Kino's map at all and was compiled by Mr. Bolton, and is not an historical document; that it was Bolton's conjecture. Objection sustained; exception noted.

Miss Chamberlin: The book published in Amsterdam in 1766 in Dutch entitled "Hedendaagsche Historie, of Tegenwooridge Staat van Amerika," contains a map at page 243 thereof. The work is another early history and a student of history of that time would go to it as a source. It happens to be a rare print. For instance, there is not a copy of this book in the New York Public Library, but they have this map there. It is a translation of Salmon, who was an English geographer, but in these early accounts geography and history went hand in hand. Salmon was well known and well considered. Kino was an explorer and wrote of his own experiences. Salmon was more of an historian and geographer who compiled the work of others. I don't know that he was ever in this country himself.

Whereupon said map was introduced in evidence and marked as Plaintiff's Exhibit 19b. To the introduction of which the defendants objected on the ground; incompetent, irrelevant, and immaterial and not a properly authenticated, authority being a compilation of the works of others. Objection overruled; exception noted.

(Here follows map marked page 321.)

Mr. Rounds: I read from page 434 of Part 2, Bulletin 30, of the Bureau of American Ethnology, dated 1912, and being "Hand Book of American Indians North of Mexico."

"San Francisco Ati. A Pima village, visited by Kino and Mange in 1698; situated W. of the Rio Santa Cruz, in S. Arizona. It was the seat of a mission established in 1756 by Father Pfefferkorn according to Oeh (Nachrichten I, 71, 1809). Not to be confounded with the Papago settlement of Ati (q. v.) farther S., on the 322 Rio Altar, in Sonora." Then he gives some references.

(Reading:) "Ati—Arricivita (1771) quoted by Hancock, Ariz. and N. Mex., 387, 1889, Atison—Anza and Font (1789), *ibid.*, 392 (doubtless identical; i. e., the 'spring' (son of Zoni) of Ati). San Francisco Ati.—Mange (1698) in Doc. Hist. Mex. 4th s., I, 318, 1856. S. Francisco.—Kino map (1701), in Bancroft, Ariz. and N. Mex., 360, 1889 S. Francisco Kino map (1702), in Stocklein, Neue Walt-Bott, 74, 1726."

Mr. Fraser: I object to that as being irrelevant to the case presented here.

The Court: It may go in subject to the objection.

Mr. Fraser: We note an exception.

The book of Jose Ortega, "History of Nayarit, Sonora and the two Californias" in Spanish, published in Barcelona in 1754, and

in Mexico in 1887 is a book published originally anonymously, but later there was a reprint of it. It is one of the most famous of those old books concerning Arizona, Sonora and Mexico. I translate from page 339 as follows the context indicating the references to Father Kino:

"This apostolic man going this road found more than 30 rancherias, part small and part large, in all more than 4,000 souls, people not only gentle, but also affable, generous and liberal since in addition to grain they regaled him with fruits of the earth, particularly pitahayas, which flourish in California in the greatest abundance, and with hares and rabbits, which they had hunted. They showed a great joy for his coming. According to the custom of other parts they received them with many crosses and arches, erected by large trechos, and even with dances which day and night they celebrated, and with many little ones which they offered to him for baptism, they gave signs of a remarkable joy which the visit of the father missionary caused to them. One of the rancherias they called San Francisco, and another two leagues farther on San Serafin, and another Del Merced, and another San Rafael. And 32 leagues farther on toward the West they gave the name of San Sonoydag, a place very good because it has lands, pastures and abundant waters, at a distance from that land of 20 leagues, of good traveling."

Mr. Fraser: We object to that as incompetent, irrelevant and immaterial, and having no bearing on the issue in this case.

The Court: The objection will be overruled.

Mr. Fraser: And may we note an exception?

The Court: Yes.

323 Q. Miss Chamberlin, will you tell us what you know about J. R. Bartlett, and his "Personal Narrative of Explorations and incidents in Texas, New Mexico, California, Sonora and Chihuahua" of 1854?

A. That is a well known record of the early American occupation of that country. Bartlett is known all over that country and was a boundary surveyor.

Q. It is an authoritative book?

A. Yes, sir.

Mr. Rounds: I will read from that book, at page 382:

"There was here a collection of 20 or 30 wigwams made of poles, bent over in a circular form and well thatched with straw, the whole so completely done that they must have been a permanent abode for their occupants. From all appearances the place had been deserted a year or more. In the midst of these wigwams was a circular pit lined with stones, where the distilling of mescal had been carried on, on a large scale. Inez said she had never seen such wigwams among the Apaches, and that it must have been a village of the Papago Indians. There were many fragments of pottery scattered about. I afterwards learned that this was a place where Papago Indians resorted annually to collect the maguey, and distill the liquor; and that about a year before our visit they were surprised

by the Apaches and some 50 men, women and children, killed or taken prisoners."

"By Mr. Fraser:

Q. Miss Chamberlin, is this woman Inez an authority on Papago history? A. Probably not.

Q. Who was Inez? A. She was a Mexican girl who was captured by the Apaches and she was taken from the Apaches by Bartlett.

Q. But so even Inez then only thought that this was a Papago village? A. Inez ought to know, if anyone.

Q. But even Inez did not express herself with precision. She only thought."

Defendants object as conjecture and as not identifying any locality. Objection overruled; exception.

Mr. Rounds: Now I read from U. S. Senate Executive Documents, Vol. 3, 30th Cong., 1st Sess., 1847-48, No. 7, being notes of a military reconnaissance from Ft. Leavenworth, in Missouri, to San Diego, in California, by Major W. H. Emory, acting under orders from the Bureau of Topographical Engineers, under date of June 5, 1846, and the report being dated Sept. 1, 1847, I read from page 67 as follows:

324 "Oct. 23, one or two miles' ride and we were clear of the Black Mts., and again in the valley of the Gila, which widened out gradually to the base of Mt. Graham, abreast of which we encamped. Just before reaching the base of Mt. Graham, a wide valley, smooth and level comes in from the S. E. Up this valley are trails leading to San Bernardino, Fronteras and Tucson."

Then he speaks of the ruins of the houses and continues:

"I do not think it probable that these ruins may be those of comparatively modern Indians, for Venegas says: 'The Father of Jacob Sedelmayer on Oct. 1744, set out from his mission and after traveling 80 leagues reached the Gila where he found 6,000 Papagos and near the same number of Pimas and Coco Maricopas.'"

Then on page 82, he continues:

"With the mounted guard, which first visited us, was a man on foot, and he appeared to keep pace with the fleetest horse. He was a little out of breath when he reached us, but soon recovering, told us that he was the interpreter to Juan Antonio Llunas, chief of the Pimas. * * * Turning from the ruins towards the Pimas villages, we urged our guide to go fast, as we wished to see as much of his people as the day would permit. He was on foot, but led at a pace which kept our mules on a trot. We came in at the back of the settlement of Pima Indians, and found our troops encamped in a corn field, from which the grain had been gathered. We were at once impressed with the beauty, order and disposition of the arrangement for irrigating and draining the land. Corn, wheat, and cotton are the crops of this peaceful and intelligent race of people.

All the crops have been gathered in and the stubbles show they have been luxuriant. The cotton has been picked, and stacked for drying on the tops of sheds. The fields are sub-divided by ridges of earth into rectangles of about 200 x 100 feet for the convenience of irrigating. The fences are of sticks, wattled with willow and mesquite, and, in this particular, set an example of economy in agriculture, worthy to be followed by the Mexicans, who never use fences at all * * *. To us it was a rare sight to be thrown in the midst of a large nation of what is termed wild Indians, surpassing many of the Christian nations in agriculture, little behind them in the useful arts, and immeasurably before them in honesty and virtue. During the whole of yesterday, our camp was full of men, women and children, who sauntered amongst our packs, unwatched and not a single instance of theft was reported. In the houses were stowed watermelons, pumpkins, beans, corn and wheat, the three last articles generally in large baskets; sometimes the corn was in baskets covered with earth and placed on the tops of the domes. A few chickens and dogs were seen, but no other domestic animals except horses, mules and oxen. * * * This peaceful and industrious race are in possession of a beautiful and fertile basin. Living remote from the civilized world, they are seldom visited by whites, and then only by those in distress, to whom they generally furnish horses and food. Aguardiente (brandy) is known among their chiefs only, and the abuse of this, and the vices which it entails are yet unknown."

To the introduction of the last excerpts the defendants objected; grounds, incompetent, irrelevant, and immaterial; objection overruled; exception noted. Motion to strike.

Mr. Rounds: In reading yesterday from the "Teatro Americano," I stopped my reading by mistake before I finished the quotation which I will now finish. Reading at page 404, and reading a few words to get the connection again, is as follows:

"There are in it 3 rancherias, so large that the multitude which occupies them is uninvestigated; among them are some Christians, but the greater part of them are gentiles, they have as well the excellent quality to be enemies of the Apaches, and very friendly to the Spaniards, and generally they are all gentle and domestic through the continuous work of the Jesuits, zealous in their catechism, in whose ministry they have exercised themselves for 50 years in this part, and it was at the petition of these people themselves; in the year 1697, their Cacique or principal captain made a journey from this place to the mission of Santa Maria Bazaraca, in which he walked from his departure and return 300 leagues, with the sole motive of asking the Padre Visitador General for baptism and evangelical ministrations, and since then in the entradas which these (apparently the Jesuits) make, the Indians bring their small children in order to obtain the healthful waters of baptism; these 3 rancherias, principally that called Judas, which is the most populous, have also in the prairie and valley of the Gila River, as in

its islands, many and very fertile irrigated lands, with a spacious place, capable of containing a great cattle ranch, occupying the length of the river, for 14 leagues, all of level ground, and for the purpose of establishing in it a mission of much Christianity gathering together there the rancherias which are the nearest from this place to arid and sterile lands."

To the introduction of the last excerpts defendants objected; grounds, irrelevant and immaterial; objection overruled; exception noted.

Miss Chamberlin:

Q. In the extract from the Handbook of American Indians, read yesterday, I see with regard to San Francisco Ati, the handbook gives various other names for that village, one of which appears to be Atison; I will ask you whether you have seen that name mentioned anywhere, and if so where? A. Yes, I have seen it mentioned.

Q. And where have you seen it mentioned? A. Mange, in his diary.

Q. Published about when? A. I cannot give you the exact date, but it was approximately the same time that Kino wrote.

Q. And any other time? A. Anza who was with Garces.

Q. And about when was his book published? A. About 1776, I think.

Q. And any other mention that you have noticed. A. In a manuscript in the New York Public Library by Jose Cortez, a Lieut. in the Royal Body of Engineers.

Q. In Mange's book, was the name Atison, or San Francisco Ati? A. He uses San Francisco Ati principally.

Q. Referring to these various names and this compound name of San Francisco, with a name added, can you, from your knowledge of names in the southwestern part of this country and Mexico, give any explanation for taking the saint's name and adding another name for names of places? A. It is a very natural thing to do; it is done all over Mexico.

Q. And what sort of names were added, that is, were they local names or religious names, or what? A. It would be the local name, as they did in Spain, before coming to this country.

Q. And can you give any explanation of the fact that in some books it was called San Francisco Ati, and sometimes San Francisco Adid, and sometimes Atison, and so forth, that is the variation of the additional name? A. Because they had no way of spelling the names except phonetically and that would vary, as it varies today.

Q. Do you know any local name in that region now that might be the same as Ati, or Adid?

Mr. Fraser: In what region?

By Mr. Rounds:

Q. In the region of the neighborhood of Santa Rosa Valley, or

Santa Rosa? A. Archi, or Ak-Chin.

Q. How do you spell those. A. Indeed, I don't know.

Q. A-r-c-h-i? A. Yes, sir.

Q. A-k-C-h-i-n; that is what you meant? A. Yes, sir.

The Court: On this map here Akchin seems to be a spot somewhat south of the spot marked "Santa Rosa."

Mr. Fraser: Yes, sir.

327 Whereupon defendant moves that the last two questions and answers be stricken as not tending to prove any issue in this case, particularly to the attempted identification of this San Francisco Adid with the place Achi or the place Akchin by saying the name sounded like the last mentioned place.

Mr. Round: I don't see that it does much harm. It may not do much good.

The Court: It may not get very far in its probative effect. It sounded like it is all there is to that. I will let the answer stay in.

Motion denied; exception noted.

Cross-examination by Mr. Fraser:

I am not a college graduate. In the institutions of learning that I attended I was a special student—I have never completed the regular college course. I have investigated the history of this case on behalf of the plaintiff and in so doing, for information, I have used many historical records. I made my search in the Public Library of Los Angeles, the Munk Library of Arizona; the New York Public Library; the Library of the Spanish Society of New York; the National Geographic Society of New York; the Museum of the American Indians, New York; the Library of the Bureau of Ethnology, Washington, and some works in the Congressional Library, and naturally I selected the works in those libraries that I thought bore on the issues in this case and those selections that have been read in court are the selections I made from the authorities found bearing on this proposition. There are no fertile ranches in the southern Papago country. You must go up as far as the Gila for fertile lands, about 75 miles away, then you come to the Papago dry lands. I have never lived in Tucson. I have attended the University there but not for credit. It is a considerable distance from the Gila River to the Papago country west of Tucson. The distinction between the Pima Indians and the Papago Indians

328 is that the Papagos are desert people and the Pimas are river people, one living on the river while the others do not. The people described as living on these three rancherias are Pima Indians and not Santa Rosa Papagos. The Cacique, which Mr. Rounds referred to recently, seems to be the Cacique of the three rancherias on the Gila and not the Papago Cacique. The Papagos living in the Santa Rosa Valley west of Tucson are not the Papagos on the Gila River, referred to in Velasco of 1850. On the next page of the report are mentioned 10 rancherias, including Santa Rosa, which the author says are the most stable of the Papagos. Asked how many of these 10 rancherias still exist among the Papagos today,

I reply that I think I could mention Santa Rosa. I can't tell you definitely about the others, because I don't know whether or not all these others have disappeared in the last ten years. Bandelier's report covering investigations from 1880 to 1885 says: "the term *rancheria*, which is always applied to a settlement of Gila Pimas, means a group of frail constructions of huts." It does not always imply frail construction. It is well known that the Papagos of the Gila built abode houses in 1850 according to Velasco. I do not object to the definition—I say that it does not completely define it, in that, a *rancheria* may also include adobe houses and may include frail structures also.

At this point plaintiff moves that its objection heretofore made on the ground that the witness could not be interrogated relative to the contents of a work after it was shown to be an authority on the subject, be ruled upon by the court. Objection sustained; exception noted.

"Rudo Ensayo" was written by a Jesuit Father, well known in his time as a traveler and historian through all that country; the friend of the common welfare, referred to in chapter 8 of "Rudo Ensayo" is Padre Mentig, because he is mentioned as having written this account. "Rudo Ensayo" is not a man's name—It is the title of the book, published anonymously.

329 Q. Now what are you able to tell us about the accuracy of observation of this Jesuit Father who wrote this last book?

Objected to as not cross examination; she said the book was a book of standing and authority. Objection sustained; exception noted.

Q. Is anything known, Miss Chamberlain, as to the ability and learning or opportunity of observation of this Jesuit Father whom you have just mentioned?

Objected to as not proper cross examination. The subject matter is the standing and authority and reputation of the book, and not the history or character of the author. Objection sustained; exception noted.

I have never lived among the Papagos myself. General objection and exception by defendants to the exclusion of all questions along the line of the questions already asked and excluded upon the various extracts put in evidence by this witness.

Examination by the Court:

Miss Chamberlain: My studies have been those of archaeology and ethnology with special reference to these subjects as they bear on the southwestern portion of our country, having to do with various types of Indians that inhabit that region. I first became acquainted with the work of each author whom I have pronounced an authority on the subject of history and about which Mr. Rounds has qualified me as an expert as follows: Beginning with Bolton's *Kino*: I have been familiar with that ever since its publication in 1919—it is a translation of a very old document lost for about 150

years. We know that Garces, in 1776, for instance, knew about this manuscript and doubtless saw it, and one is not sure of the exact date that it was lost. It was buried, as so many of these old documents have been, in the archives of Mexico, and Professor Bolton, who is a great authority upon the southwest and Mexico and the Spanish language, found it there. There have been other writings by Kino to which I have had access, and to which students have had access, published before. The publication in this form in 330 1919 is an authoritative historical work, because Kino is regarded by historians as an accurate chronicler, was such a close observer, and traveled so extensively for 25 years through that country.

The next is "Theatro Americano." I have known that work about 6 years.

Plaintiff read into the evidence extracts from a letter, dated May 1, 1909, addressed to the Register and Receiver of the Land Office, Phoenix, Arizona, from the Assistant Commissioner of the General Land Office, Dept. of the Interior, describing lands subject to entry under the act of Congress, Feb. 19, 1909, which letter contained a description of many sections of land covering practically the whole Santa Rosa valley.

To the introduction of which the defendant objected on the ground that it was irrelevant, for the reason that the subsequent creation of the reservation exempts land therein from the terms of the order, and, as to land not within the reservation, that the general rule of the Department of the Interior that no entry of any sort should be permitted on lands occupied by or in the possession of an Indian exempts land so occupied. Objection is overruled and exception is noted.

Mr. Reid: I have shown the letter I hold in my hand to the counsel for the Government. On account of not encumbering the record with a lot of surplus descriptions, it is agreed that I may read the body of the letter into the record, and state that 2½ acres were reserved at Santa Rosa to the Government under this letter. (Reading:)

"Dept. of the Interior, Office of Indian Affairs.

Washington, Feb. 23, 1916.

"Withdrawals for Pumping Plants.

The Honorable the Secretary of the Interior.

SIR:

On January 14, 1916, the President signed Executive Order No. 2300, withdrawing large tracts of land in Southern Arizona, both surveyed and unsurveyed, to be set apart as a reservation for the Papago Indians. In his letter dated Jan. 19, 1916, Mr. C. R.

331 Olberg, Supt. of Irrigation, recommended that certain described tracts of land within said withdrawal located near Maricopa, Pinal County, be reserved for pumping purposes in order

that title to the wells and plants located thereon may remain vested in the U. S. The lands described by Mr. Oberg embrace 7 locations of approximately $2\frac{1}{2}$ acres each."

It is stipulated by counsel that one of the tracts described in this letter is at Santa Rosa, and this letter, it is stipulated, is signed by E. B. Meritt, Assistant Commission

Plaintiff rests.

Whereupon the defendants move that this case be dismissed at Plaintiff's costs for the following reasons:

First. That the alleged plaintiff has not shown facts sufficient to sustain the cause of action set forth in the complaint, or sufficient to constitute a cause of action in equity against these defendants.

Second. That the alleged plaintiff has not shown facts sufficient to justify the relief demanded, or any relief.

Third. That it has not been proved that the alleged plaintiff is a municipal entity, or juridical entity of any kind.

Fourth. That it has not been proved that the alleged plaintiff was a municipal entity or legal entity capable of acquiring or holding title to land prior to the date of the Gadsden Treaty.

Fifth. That the alleged plaintiff has not been identified with any community of Spain or Mexico existing prior to the Gadsden Treaty, and it is not with any certainty identified with any existing community.

Sixth. That it has not been shown that the alleged plaintiff has or ever had the fee title to the land mentioned in the complaint, or to any land.

Seventh. That it has not been shown that the alleged plaintiff as a community has or ever had title of any sort to the land mentioned in the complaint, or to any land.

332 Eighth. That the monuments and boundaries to the tract claimed in the complaint have not been shown with sufficient certainty to identify said tract, or to enable or authorize the court to make any decree with reference to such tract.

Ninth. That said tract is not shown to have been marked out or severed from the public domain by survey or in any manner, during the sovereignty of Spain or Mexico over the territory here in question.

Tenth. That there is no proof of possession or occupancy of said tract, or of any definite tract whatsoever, by the alleged plaintiff, or by any Papago Indian community, during the sovereignty of Spain or Mexico over the territory here in question, or even since that time.

Eleventh. That the facts proved do not meet the requirements of article 6 of the treaty of Mesilla, commonly called the Gadsden Treaty, providing that no grants of land made prior to Sept. 25, 1853, are to be respected or considered obligatory which have not been located or duly recorded in the archives of Mexico.

Twelfth. That the Court has no jurisdiction of this suit, for the reason that the U. S., is the real party in interest as defendant, and has not given its consent to be sued.

Motion argued and denied.

Whereupon, **Ralph S. Rounds** was called as a witness on behalf of defendant, and after being duly sworn, was examined and testified as follows:

Direct examination by Mr. Fraser:

Ralph S. Rounds is my name. I am a lawyer, living in New York. I am one of the Attorneys for the plaintiff in this case; I am a member of the firm of Rounds, Hatch, Dillingham & Debevoise, which firm was attorneys for the plaintiff in this case on January 9, 1919. The letter written Jan. 9, 1919, to Hon. Alexander C. King, Solicitor General of the U. S., at Washington, D. C., signed with our firm name, was written by our firm. It refers to this suit.

Whereupon defendant offered said letter and powers of attorney in evidence, which was received, marked as Defendant's Exhibit 7-a, reading as follows:

"Rounds, Hatch, Dillingham & Debevoise,
Attorneys-at-Law.

Ralph S. Rounds, Eugene H. Hatch, Frank A. Dillingham, Thomas M. Debevoise, Robert C. Mead, Francis E. Neagle, Stephen Barker, Chas. S. Bulkley, Eugene Congleton, George M. Wolfson.

Porto Rico Office: San Juan, P. R.

62 Cedar Street,
New York, Jan. 9, 1919.

To John F. Truesdell Jan. 14/19.

Hon. Alexander C. King,
Solicitor General of the U. S.,
Washington, D. C.

DEAR SIR:

Answering your letter of the 3rd inst., regarding the case of Franklin Knight Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office against the Pueblo of Santa Rosa now pending in the Supreme Court in which you ask us to inform you by what authority the suit was instituted and maintained, we have to advise you that our authority was conferred by the power of attorney and substitution under such power of attorney copies of which we are enclosing herewith. We beg to state further that we are advised that the inhabitants of Santa Rosa are cognizant of the fact that the suit is pending and are in sympathy with the result sought to be obtained.

Yours truly,

ROUNDS, HATCH, DILLINGHAM &
DEBEVOISE."

The power of attorney referred to is a copy of Defendants' Exhibit 17, hereinafter set forth, attached to which power of attorney is a substitution as follows:

"Endorsed.

"Power of Attorney from Luis to Robert F. Hunter.

"Know all men by these presents that I, Robert F. Hunter, of the city of Washington, District of Columbia, by virtue of the
 334 power and authority to me given in and by the letter or power of attorney of Jose Maria Ochoa, head chief or captain of 17 villages of Papago Indian citizens of the U. S., and Joaquin, Captain of the village of Bajio, in the territory of Ariz., bearing date of the 9th day of Dec. A. D. 1880 and by the letter or power of attorney of Luis, Captain of the Village of Santa Rosa, in the territory of Ariz. bearing date the 8th day of Dec., A. D. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head captain of the Papagos of Ariz., and Clemente, captain of the villages of Anaca and Poso Solado in the territory of Ariz., bearing date the 17th day of Dec. A. D., 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief of 17 villages of Papago Indian citizens of the U. S., and Julian, Captain of the village of Caca in the territory of Ariz., bearing date the 7th day of Dec., A. D. 1880 and by the letter or power of attorney of Ascension Rios, captain of the village or pueblo of San Xaxier del Bac, bearing date the 8th day of Dec. A. D. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief or captain of the Papagos of Ariz., and Antone, Captain of the village of Quajate, Ariz., Territory, bearing date the 17th day of Dec. A. D. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief and captain of 17 villages of Papago Indian citizens of the U. S., and Miguel, captain of the village or pueblo of Tecolote in the Terr., of Ariz., bearing date of the 7th day of Dec., 1880, and by the letter or power of attorney of Jose Maria Ochoa, head chief or captain of the Papagos of Ariz., and acting as captain of the village of Coyote, Ariz., Terr., bearing date the 17th day of Dec. 1880, and by the letter or power of attorney of Jose Maria Ochoa, head captain of 17 villages of Papago Indian citizens of the U. S., and captain of the village — o of Quitaca, in the Terr. of Ariz., bearing date the 7th — ec., 1880 and by the letter or power of attorney of Jose — hoa, head chief and captain of 17 villages of
 335 Papago Indian — of the U. S., and Pablo, captain of the village of Tesota in the Terr. of Ariz., bearing the date the 7th day of Dec., A. D. 1880, a true copy of which powers of attorney and each thereof are hereunto annexed, do substitute and appoint Alton M. Cates of the County of Ventura, State of California, to do perform and execute every act and thing which I might or could do as the attorney in fact and substitute of the said persons hereinabove named and described hereby ratifying and confirming all that the said attorney and substitute herein made and appointed, shall do in the premises by virtue hereof and of the said letters or powers of attorney and each thereof.

In witness whereof, I have hereunto set my hand and seal this 31st day of May, A. D., 1911.

ROBERT F. HUNTER. [SEAL.]

Witnesses:

C. B. GUITTARD.

JENNIE SHUTT.

The foregoing instrument is duly acknowledged by a Notary Public on the date it bears and there is a certificate of the County Clerk of the proper county showing the Notary acknowledging the same to be qualified.

Manuel Garza-Aldape was called as a witness on behalf of defendants, and after being duly sworn, was examined and testified as follows:

Direct examination by Mr. Fraser:

Manuel Garza-Aldape is my name. I live in New York City. I am a lawyer, advising in Latin-American matters. Am a native of Mexico—my native language is Spanish. I have lived in this country 8 years. I lived in Mexico all the rest of my life with the exception of some time spent in Europe. I am admitted to practice law in all the courts of Mexico. I went to the grammar school in the town in which I was born, State of Coahuila, one of the northern states, then I passed through the capital of the State, Saltillo, and attended preparatory school; after that I went to Mexico City and entered the law school called the National School of Jurisprudence, where I graduated in 1893.

336 Plaintiff here objected to testimony by this witness on the unwritten law of Mexico, on judicial construction of statutes already cited, and in general on Mexican law relevant to this case, as incompetent because these are matters of judicial notice.

From this point the Court allowed the witness to continue answering the questions propounded to him upon the condition that his answers should not be considered evidence but would be received in the nature of counsel to the court advising upon matters of which the court would take judicial knowledge.

Mr. Rounds: But nothing on the record that it is no part of the evidence?

The Court: Yes.

Mr. Rounds: And if the stenographer takes it, he takes it like an argument.

Mr. Fraser: For the sake of my record, will your Honor allow me an exception, to the ruling that this is not to be regarded as evidence?

The Court: Yes.

J. Walter Fewkes was called as a witness on behalf of defendants, and after being duly sworn, was examined and testified as follows:

Direct examination by Mr. Fraser:

J. Walter Fewkes is my name. I reside at Forest Glen, Md. I am chief of the Bureau of American Ethnology and have been so for 5 years—I have studied the subject 30 years. My studies cover the subject including the southwestern states of this country. I graduated from Harvard in 1875 and in the same University took the doctor's degree of philosophy in 1877; was made a doctor of laws at the University of Tucson, Arizona in 1914 and 1915, I think. My time has been exclusively occupied these 30 years in the study of ethnology and its kindred subjects with the exception that during the last 5 years I have been engaged in a great deal of administrative work—I have studied the history of the countries whose ethnology I study. Mr. H. H. Bancroft is regarded by me as a secondary authority, sufficient to have his work regarded
337 as creditable—he is a compiler. I am not familiar with the other volumes, but in the 17th volume of his work dealing with New Mexico and Arizona, I have found mistakes but on the whole I find him a man of good suitable authority. From his quoted works I think he has had access to and has searched the earlier Spanish records of that part of the country. I regard Bandelier as of the highest authority in his report on the Indians of the southwest of this country. I consider E. S. Curtis an authority on some Indians—I would regard his work on the Papagos as secondary authority but reasonably creditable. By secondary I mean that in all historical studies, in order that the documents under which history is built, we have to have the documents, and Mr. Bandelier and Mr. Bancroft have collected a large number of documents from various sources. Now, a man of secondary creditability, I think, would be a man who would collect those independently and use them creditably—the authority, of course, is in the hands of the writer of the documents, who has gone to his reward. I think Bancroft's compilation a reasonably creditable and reliable work.

Whereupon defendant read into the record extracts from Vol. 17, of Hubert Howe Bancroft, covering the history of Arizona and New Mexico.

Mr. Fraser: On page 344, I read as follows:

"Now that eastern annals have been brought down to the end of Mexican rule, it is time to turn again to the west, to that portion of our territory known later as Arizona. In Spanish and Mexican times there was no such province, under that or any other name, nor was the territory divided by any definite boundaries between adjoining provinces. That portion south of the Gila was part of Pimeria Alta, the northern province of Sonora. Except a small district of this Pimeria, the whole territory was uninhabited, so far as any but aborigines were concerned. A small tract in the northeast

was generally regarded as belonging to New Mexico, because the Spaniards of that province sometimes visited and had once for a brief period been recognized as masters of the Moqui pueblos."

On page 352 I read as follows:

"Pimeria Alta, home of the Pimas, but also including that of the Papagos, Sobas and Sobaipuris, besides other tribes in the north, was bounded on the south by the rivers Altar and San Ignacio with the latter's southern affluents, on the North in a general way by the Gila Valley, on the West by the Gulf and Rio Colorado, and on the east by the San Pedro, the country farther east being the home of Apaches and other savage tribes. This broad region was explored within a period of 20 years at the close of the 17th century and beginning of the 18th by the famous Jesuit, Father Eusebio Francisco Kino."

And on the same page as follows:

"Kino's great work began in 1687, when he founded the frontier mission of Dolores, his home or headquarters for the rest of his life. For 6 years he toiled alone till Fathers Campos and Januske came in 1693 to take charge of San Ignacio and Tubutama; and only 8 padres besides Kino worked in this field during the latter's life, there being rarely, if ever, more than 4 at the same time. Missions were, however, established, besides the 3 named, at Caborea, Suamoia, and Cocosperra, with a dozen or more of the Rancherías as visitas. Those which became missions or visitas before 1800 with the presidios and other settlements, are best indicated on the appended map.

Whereupon a map was offered in evidence, as defendants Exhibit 8-a, to the introduction of which plaintiff objected on the ground that unless the maker of map is shown to have been in the country and made the map himself, it would be exactly on a par with the map of Bolton, which he had in his book and which was ruled out on the same ground by the court. Objection sustained; exception noted.

On page 354, I read as follows:

"There were no other establishments in these times except a garrison, or presidio, at Fronteras, or Corodeguachi; this and a compania volante being charged with resisting the almost constant raids of savage tribes in the northeast, and often requiring assistance from other presidios. All this region was under a comandante de armas, residing generally at San Juan Bautista, farther south and there was no other government in the north."

On page 355, I read as follows:

"In November, 1697, was undertaken the first formal exploration in this direction of which any detailed record has survived."



Kino's Map of 1701.

On page 359 (reading):

"On the return, however, parting from Salvatierra at Sonoita, Kino and Mange crossed the country to Bac, and returned home by the old route. Later in this year the venerable explorer crossed from Sonoita to San Pedro on the Gila went down to San Dionisio, and thence down the Colorado past Santa Isabel, the last 339 Yuma rancheria, to the country of the Quiquimas, whence he crossed into California; and on his return he may be supposed to have made the map which I append."

Whereupon defendants offered a copy of Father Kino's map of 1701, which map was admitted in evidence, marked defendants' Exhibit 9a.

(Here follows map marked page 339a.)

Summing up the account of Father Kino's life, on page 361, he says:

"As I have said, there is no satisfactory evidence that Arizona had either a regular mission or a resident Jesuit before Kino's death in 1711. After Kino's death, for more than 20 years no Spaniard is known to have entered Arizona. It is not unlikely that a Padre may have visited the rancheries of the Santa Cruz valley, or that parties of soldiers from Fronteras may have crossed the line in pursuit of Apache foes, but no such entradas are recorded. Pares Campos and Velerde were left for the most part alone in Pimera Alta, and through zealous workers, they had all they could do, and more, to maintain the prosperity of the old missions, without attempting new enterprises. They could not visit the northern rancheries, and they could not give much encouragement to visitors from distant tribes, who came to inquire why the Padres did not come as promised. All communications gradually ceased, the Gila tribes forgot what Kino had taught them, and even the nearer Pimas and Sobaipuris lost much of their zeal for mission life. Only two or three other Padres are known to have worked in the field before 1730."

And on page 362 (reading):

"In 1731, however, there came a small reinforcement of missionaries, and two of them were in 1732 sent to the north, effecting what may be regarded as the first Spanish settlement of Arizona. Father Felipe Seggesser took charge of San Xavier del Bac, and Juan Bautista Grashoffer of San Miguel de Guevavi, which from this time may be regarded as regular missions, the other rancheries becoming visitas."

And then on page 363 (reading):

"In 1750 occurred the second revolt of the Pima tribes, in which

340 two missionaries at Caborca and Sonoita were killed, as were about 100 Spaniards in all. Bac and Guevavi were plundered and abandoned but the two padres escaped to Suamoa, which on account of the nearness of the presidio, was not attacked. Peace was restored in 1752, and the missions were reoccupied; but a bitter controversy between the Jesuits and their foes respecting the causes of the trouble did much to increase the demoralization arising from the revolt itself, and all the semblance of real prosperity in the establishments of Pimeria Alta was forever at an end."

On page 368, he says as follows (reading):

"During the remaining years of the Jesuit period 1751-67, the missions of Pimeria Alta barely maintained a precarious existence. The Spanish Jesuits in many cases had been replaced by Germans, and all were more or less discouraged and disgusted by the complicated and fruitless controversies of earlier years. There was no progress but constant decadence."

And so on much more to that effect.

Whereupon defendants offered in evidence a copy of a map from Father Venegas from page 370 of said work, which map was received in evidence, marked Defendants' Exhibit 10-a and is as follows:

(Here follows map marked page 341.)

342 Mr. Fraser: On page 373, I read as follows:

"In this connection, also, it is proper to note that the few and brief presentments of early Arizona annals which are extant, as prefatory matter to modern works devoted chiefly to later history, and to a description of the country and its resources, are not only meager and fragmentary in detail, as they like my own must necessarily be, but full of errors, and almost wholly misleading in their general scope; though it should be added that, the works in question often merit high praise for their accurate treatment of the later topics that come more properly within their field. In these works the tendency is to regard Padre Kino's wanderings as mission-founding expeditions, though as a matter of fact, there were no missions in Arizona till long after his death. From the Spanish names on early maps—identical with or corresponding to those of Kino and Venegas, as presented in the preceding chapter—the conclusion has been drawn that up to the Gila valley, Arizona, was covered with prosperous Spanish missions and settlements, which had to be abandoned later in consequence of Apache raids; yet in truth, as the reader knows, there was no Spanish occupation beyond a narrow region of the Santa Cruz Valley, and even there only two missions, Bac and Guevavi, with a few rancherias de vista, under resident padres from 1732, or possibly 1720, and protected in their precarious existence by the Tubac presidio from 1752. The misleading Spanish saint names were simply those applied by Kino and his associates

to the rancherias visited on their exploring tours, whose inhabitants in some instance, were induced to make preparations for the reception of missionaries promised, but who never came. The Arizona missions were never more than two, and they were never prosperous. So, also, the rich mines and prosperous haciendas, with which the country is pictured as having been dotted, are purely imaginary, resting only on vague traditions of the Planchas de Plata excitement, and on the well known mineral wealth of later times. The Jesuits, of course—though the contrary is often alleged—worked no mines, nor is there any evidence that in Jesuit times there were any mining operations in Arizona beyond an occasional prospecting raid; and even later, down to the end of the century, such operations were, on a small scale, confined to the vicinity of the presidios; and the same remark may be made of agricultural operations, all establishments being often abandoned, and oftener plundered by the savages. And finally, it has been the fashion to regard Tucson as a more or less prosperous town from a very early time. Some writers even date its foundation in the sixteenth century; though, as a matter of fact, it is not heard of even as an Indian rancheria till the middle of the eighteenth century, and was not properly a Spanish settlement till the presidio was moved there in later years."

In a note to page 373, referring to that statement that modern works are full of errors, he refers especially to Silvester
343 Mowry's Arizona and Sonora, quoted by plaintiff as an authority. He says (reading):

"Perhaps some injustice is done by naming these books in a group, since they differ greatly in their value so far as modern Arizona is concerned, but these differences to some extent will appear in later chapters. From all a very good sketch of modern conditions and progress may be formed. In their treatment of early times they vary also—from bad to very bad."

Opposite page 384 the author gives what I think is the map. "Missions of Arizona, 1768-1846," that was offered already and objected to, but with a different legend. This time it reads "Missions of Arizona, 1768-1846," and I offer this second map as the historian's showing as to what those missions were.

Mr. Reid: Who was the author of that map?

Mr. Fraser: All I know is what is stated here. "Missions of Arizona, 1768-1846." But it is the same map as the other one, with a different legend at the bottom.

Mr. Reid: I think we will object to that, if the court please, because it is not shown that the author has been in this country, even, and it is not shown whose map is reproduced here.

The Court: I don't see how it is relevant. The objection will be sustained.

Mr. Fraser: And may I have an exception?

The Court: Yes.

Thereafter, defendant introduced a copy of Padre Font's map, on

page 393 of Bancroft, which was received in evidence marked Defendant's Exhibit 12-a, as follows:

(Here follows map marked page 344.)

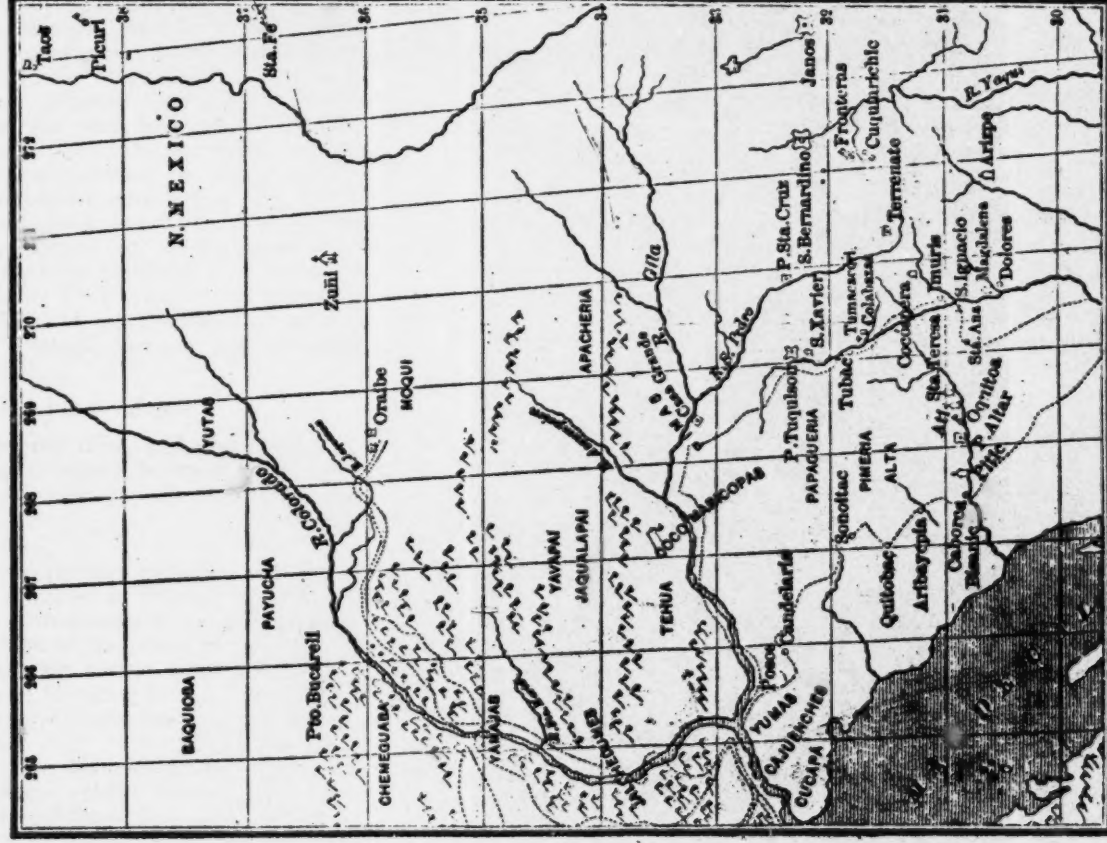
345 Mr. Fraser: On page 401, he proceeds (reading):

"What has been said in this chapter, though relating mainly to the eighteenth century, also includes nearly all that can be known of the country's annals down to 1845. There is no data on which to found anything like a chronologic record of events from 1800, and the few items of local interest that are accessible have already been presented. The prosperity that began in 1790 may be regarded as having continued to about 1820, but as having disappeared entirely with the end of Spanish rule in 1822. During these three decades the Apaches were for the most part at peace under treaties which by gifts and rations it was made their interest to observe. Many of them came to live in rancherias near the presid-os. At the same time the presidial garrisons were vigilant, and with the aid of friendly Pimas and Papagos, had little difficulty in protecting the country from the occasional raids of the distant and hostile bands. It was the golden era of Pimeria history, though only so in comparison with the past and future misfortunes. Naturally under these circumstances, not only were the missions somewhat prosperous, as shown particularly by the magnificent church structure at Bac, but mines were worked as before explained and stock raising ranchos and haciendas were built up in the region extending from Tucson to the southeast and southwest. The ruins of these establishments are yet to be seen at many points. Then during the last years of the war for independence—which, however, in itself produced no direct developments in connection with the history of this far north—and especially in the early years of Mexican rule, all this was changed and all prosperity vanished; the Apaches resumed their depredations, the garrisons became demoralized, and all other establishments were practically abandoned."

On page 404, he continues (reading):

"For the period of 1842-5 I have a large number of detached fragmentary records, which, while not sufficient for a complete chronologic narrative, give a very satisfactory idea of the general condition of affairs on the frontier. There is no indication that in Arizona any Mexican settlement existed, except at Tucson and Tubac, where under protection of soldiers a few settlers still managed to live. From the 2 presidios complaints of inadequate force, arms, horses, and other supplies are frequent. In 1842-3 the Papagos and Gila tribes were concerned in hostilities at the instigation of Gandara, as was charged, but they became repentant and were pardoned in May, 1843."

gone up the Colorado and could not be found. Palma, the Yuma chief, also joined the Spaniards for a trip to Mexico; and the return march was through Papaguería to Caborca and Altar, where they arrived on the 1st of June.²⁵ Though the diaries of Anza and



PADRE FONT'S MAP OF 1777.

²⁵ May 14th, ford of the Colorado below the Gila; 15th, up the Gila to Cerros del Cajon, 5 l. (or 7); 16th, ditto to Laguna Salada, 7 l. (or 4); 17th, leaving the river for the s. e., to Pozos de Enuelio, or Zacatal Duro, 8 l. (or 11); 18th, e. s. e. past Tinajas de Candelaria, to Puerto Blanco, or Llano del Fuzal, 9 l. (or 18); 19th, s. e. to Arroyo del Sonoitac, or Carrizal, 8 l. (or 10); 20th, past the ruined mission of S. Marcelo de Sonoitac, 12 l.; 21st, past S. Luis Quitobac to S. Juan de Mata, 14 l. (or 17); 22d, past S. Eduardo de Aribacapia, to S. Ildefonso, 11½ l. (or 15); 23d, to Caborca, 9 l.

On page 474, carrying over from the last quotation, the author continues (reading):

"That part of the country known later as Arizona remained a Mexican possession down to the signing of the treaty of Guadalupe Hidalgo in 1848, and all south of the Gila, the only portion inhabited by any but Indians, for 5 years longer, or until the signing of the treaty of Dec. 1853, or its approval in 1854. The
346 annals of this southern region, the ancient Pimeria Alta, might almost be disposed of by adding et cetera, to the chapter in which the record has been brought down in 1845. That is, the Mexicans under the Sonora government barely maintained a precarious possession of Tucson and a few other establishments in the Santa Cruz Valley. The Apaches continued their raids, sometimes driving off live-stock from under the very walls of the presid-os.
* * * There was a constant diminution of the population and most of the few remaining ranchos were abandoned. A census report of Sept. 1848, gave Tucson 760 inhabitants, and Tubac 249. In December of the same year, after an attack in which 9 persons were killed, Tubac and the adjoining settlement of Tumacacori were abandoned, the people transferring their residence to Tucson. Between this presidio and that of Santa Cruz south of the line it does not clearly appear that a single Mexican establishment of any kind remained, though before 1852 a small garrison had reoccupied Tubac."

That is perhaps all I will read from that volume.

"The Papagos are a small cowardly tribe, and their lands being unfit for missions they should be 'extracted' to other lands. Many have already moved, and San Ignacio is more Papago than Pima."

Then on page 662, as follows:

"Padre Manuel Aguirre, who was perhaps visitador, wrote several letters on the subject and made inquiries of Espinosa at Bac. Unfortunately the fragments of the correspondence are not sufficiently complete to show the state of things in the north nor exactly what changes were proposed; but it does not matter much since nothing was done. Aguirre was in favor of bringing in the Papagos to the valleys of San Luis, Buena Vista, and Santa Barbara, and called on the provincial for two new padres." * * * In 1763 Padre Ignacio Lizazoin made a long report on the unfortunate condition of the province resulting from the 'inhuman cruelty' and ravages of Seris, Pimas and Papagos, which had caused the almost total abandonment of Pimeria and Sonora provinces, the inhabitants having taken refuge in Ostimuri and Sinaloa. The padres dared not enforce proper discipline for fear of provoking a general revolt in the missions."

Then on page 566, occurs the following (reading):

"The anonymous author of the valuable work on Sonora in 1764, which I have so often had occasion to cite, after giving a most complete description of the province and its condition, has but very little

to say in his closing chapter of the best method of freeing Sonora from her scourge, beyond recommending a general policy of trust in God and dry powder. The Seri and Pima confederates, however, should be removed to some country beyond the sea; the right to do this cannot be questioned and the expense would be more than repaid by the revival of mining and agricultural industry."

347 I will read a few passages from part I of A. F. Bandelier's Final Report of Investigations among the Indians of the Southwestern United States, carried on mainly in the years from 1880 to 1885, being papers of the Archæological Institute of America, Series III.

Volume III, at page 30 says:

"Thus we find the southern Pimas, in Sonora, living at the time the Spaniards first came in contact with them in solid houses made of large adobes, each village having besides a central place of refuge in the shape of a house strongly constructed for defense. The northern Pimas and the Papagos, although their near relatives, occupied huts well covered, but still only huts, and their villages were but hamlets compared with those of their southern brethren."

On page 72, as follows (reading):

"Between the Opates and Eudeves in the east, and the arid shores of the Gulf of California on the west, a branch of the great and numerous Pima stock the Papap-Otam or Papagos, roamed over, rather than inhabited, northwestern Sonora and southwestern Arizona. The Papagos came in contact with the Spaniards in the latter part of the seventeenth century. From the nature of their country, they could scarcely be called village Indians. Though they spoke the Pima language, they were much more unsettled than either the Nebomes or the Arizonian Pimas. Mostly reduced to hunting, to wild plants, and to a limited exchange with other tribes for their subsistence, the Papagos were shunned and feared, as nearly all roving Indians are by sedentary tribes. Still it was shyness rather than ferocity that kept the former aloof from intercourse."

Again, on page 78, as follows (reading):

"While in Sonora we have mostly met with tribes almost, if not exclusively, sedentary. (The Seris and Papagos being the only ones to whom this designation cannot be properly applied) on the soil of Chihuahua the proportion of roving Indians to those of more sedate habits is greater."

And on page 102 as follows (reading):

"In the beginning of the seventeenth century, we find that Arizona was inhabited in the south by tribes speaking the Pima language."

And then after reference to the Apaches and their tribes, he continues (reading):

"West of them commenced the range of the Papap-Otam, or Papagos, whom we have already met in Northwestern Sonora, and

348 who roamed over rather than raided in the southwestern corner of Arizona to within a short distance of the Gulf coast. The country is so bleak so destitute of attractions for village Indians, that no large population of any numbers could remain there for any length of time so long as general safety was not firmly established."

And on page 103, he says:

"North of the Papagos, and along the Gila River, between the Canon of San Carlos and Yume, the Pimas proper, or Aquira-Otam, dwelt in scattered hamlets, the houses of which combined today the mud roof of a typical New Mexican pueblo with the temporary framework of frail branches characteristic of the roaming savage."

On page 192, as follows (reading):

"The Spanish government recognized at an early day, not merely that the Indian was a human being, but that he was, after all, the chief resource which the New World presented to its new owners. The tendency of Spanish legislation is therefore very marked towards insuring the preservation and progress of the natives; the first great step in this direction was the promulgation of the celebrated 'New Laws and Ordinances for the Government of the Indies', finally established in 1543, by which the aborigines were declared direct vassals of the Crown. Stipulations in their favor, as, for instance, enfranchisement from personal servitude and from compulsory labor, became the subject of subsequent modifications and local changes, but the disposition first announced, that of direct vassalage, remained a fixed dogma in Spanish American law."

And on page 250, the following (reading):

"The Papagos of Arizona are Pimas by language, although with a dialectical variation. They are less agricultural than herding Indians, for the Papagueria is a barren stretch, where water is scarce, and what there is better serves to supply cattle and sheep and horses than to irrigate even the smallest region of arable soil. The Papagos therefore mostly dwell in so-called ranches, not in villages, the settlement at San Xavier del Bac, near Tucson, excepted." * * *

Then further on the same page he continues (reading):

"The Papago is a fair Indian Christian; he clings to his church, and also holds on to his ancient beliefs, according as he considers the one or the other more suitable to his actual needs."

I have here one other extract from E. S. Curtis' works on "The North American Indian," Vol. 2, occurring in the chapter on "The Papagos," reading thus—speaking of the San Xavier Reservation:

349 In acknowledging the Christian faith the Papago merely followed the line of least resistance, for by adding a little more ceremony to their life, even if it be the ceremony of the white man, they do no violence to their primitive religion, and at the same

time escape the danger of punishment by fire and brimstone threatened them in a Christian hereafter. The larger part of the Papagos are a semi-nomadic; that is, they wander from place to place as occasion necessitates. One week they may be harvesting their little crops of grain; the next they have taken the trail to the mines to work for a time, or gone to the hills or river valleys to gather cactus fruit or mesquite beans. Many of them in the Fresnal valley have cattle upon which they depend wholly for support; others till small desert farms, irrigated with fresh water. Little settlements depending on scanty crops and small herds are scattered throughout south-central Arizona and northwestern Sonora."

Whereupon the defendants read into the record extracts from copies of letters as follows; the material parts of each following the identification of the letter. Letter written June 24, 1874, from R. A. Wilbur, U. S. Indian Agent, Tucson, Arizona, to E. P. Smith, Commissioner of Indian Affairs, Washington.

"Agency Papago Indians.

"SIR:

As I have never received an official communication from your office, relative to the agency having been placed in charge of the Catholic Church organization, I have the honor to ask for information upon this subject, and would also request in this connection, that their powers be fully explained, as I desire to learn what relation we bear to each other, the better to enable me to discharge my official duties. That you may be enabled to understand why the Agency should never have connection with this church (more especially under supervision of the present Bishop and Priests, I beg leave to submit the following: * * * Several priests have come and gone since then (at which time all church property was confiscated) the last being Bishop Salpoints—then Vicar. When the venerable prelate made his first appearance among these people, he called some of them together and said he had come to take charge of them, and wanted them to stand in the same relation to him as they formerly did to the Jesuit Priests—but as their relation to the Jesuits were that of slaves, they decidedly objected. Failing in this he requested that they give him a large field (as it all belonged to the church) in consideration for which, he was to say mass every Sunday and open a school. They allowed him about ½ of what he demanded whereupon he took possession, said mass a few times, got some of their children together for a few days, and then abandoned

350 his promised work, only leaving a man to teach the children and this teacher immediately followed the Bishop at the same time forgetting to turn the land back to the Indians for non-fulfillment of agreement, but not forgetting to rent it to Mexicans who have always quarreled more or less with the Indians for water, for irrigation as well as about repairing fences and improving the ditches. When these Indians were much poorer than they are at present, and when the Apaches were stealing from them continuously and they were in a wretched condition, this same Bishop Salpointe imposed

upon them a church tax (of 1/10 of what they raised) which they only suffered him to collect for one year. The effect which it produced, has been lasting and they look upon him as one who had tried to and would today if he had the power, impose upon them the curse of all nations—Slavery. These Priests have never taken an interest in these Indians save a detrimental one and in all probability never would had I not been successful in obtaining from Government assistance to build and furnish a school house and in leading them to feel that their interests were being cared for. Seeing this and perhaps thinking the Papagos might become an enlightened and an educated people, and that the ground had been broken which would ensure success, these Priests conceived the idea of getting full control of this Agency, and have been very persistent in their efforts to attain it. Since the organization of the Public School system in Arizona, the Catholic Priests have made a most bitter and determined war upon it, and the Bishop Salpointe said to me 'That he intended to break it up.' If you desire further proof of their action upon this subject, I respectfully refer you to Gov. A. P. K. Lafford who has been the main laborer in establishing free schools all over this territory. Since the Bishop's return from Washington he has interfered in the management of business pertaining to my office and as he espoused the cause of others detrimental to the Papagos' right, it came directly to my knowledge. Upon receiving this information from the Indians I questioned Juan Saloso, my interpreter for the school and the medium through whom the Bishop conversed with the Chief Francisco as to what the Bishop had to say to the chief, and his reply was 'Rather than reveal what the Bishop had to say I would prefer to have the mountains fall on me and bury me.' The Bishop has requested that I take my books and papers to his place for inspection. But as I know of no authority permitting him or anyone, save a regular appointed U. S. Inspector, to examine my affairs, I replied that my accounts had all been forwarded to Washington for inspection and final settlement, whereupon he replied, 'You doubt my authority to examine your accounts and acts do you?' In conclusion I would respectfully submit as worthy of consideration that Bishop J. B. Salpointe is not a citizen of the U. S., and it would seem if the Papago Indians are to be continued under the control of the Catholic denomination, that a member of that body who is a citizen of this country which supplies the means to sustain the agency and Indians should be substituted for the present alien one—who is persistent in his efforts to break down one of our most
351 cherished American institutions, the Public School System—to oppress the poor, and impoverish and if possible enslave and degrade the Indian when it is his duty to elevate in accordance with the policy of the President."

Certified copy of said letter was offered in evidence as defendants' Exhibit 13-a.

There is attached to that letter a letter from John Wasson, Commissioner of Indian Affairs, Washington, D. C., and referring to the foregoing letter—without reading it all—he says he has just read the foregoing letter, and continues (reading):

"Our government policy is to so educate the Indian that he may be elevated morally and be led to support himself comfortably, whereas the Catholic Church, as represented here, will handle the Papagos so as to advance the interest of the Church in preference to the Indian. Then again, I am quite sure that much of—if not all—the local pressure to have the Catholic Church supplant Wilbur by another agent is the offspring of unjust opposition to Wilbur and his friends, and solely for selfish purposes, without the slightest care for the Indians' interests. The transfer of the Papago Indian Agency to any other Church organization would be an act fully justified on the highest and broadest public policy, and will increase proper respect for our common government and encourage the few men here who are most unselfishly laboring to educate the masses in the manner done in all the great States of this Union."

Letter dated July 21, 1874, at Tucson, Arizona, from R. A. Wilbur, to same Commissioner, as follows:

"I have the honor to submit the following—to wit Capt. Ascension Rios, acting interpreter, called upon me last week and related the following—'Says Bishop J. B. Salpointe sent for him to come to the church for the purpose of telling him (Ascension) that he had received a communication from Washington wherein it stated that all Indians occupying the position of Captain in the tribe receive pay and he wanted to know of him, if he was receiving pay of the agent as Captain, and if not to demand the same of me. Bishop Salpointe also called upon Capt. Francisco and asked him the same questions whereupon they told him (the Bishop) that they knew nothing of their rights to receive pay in such capacity, but would make inquiries of their Agent. Upon presentation of the subject by them, I told them that I knew of no law or reason even, why they should receive pay as captains and if there was such a law, and if they had a right to be paid as captains I would soon find out, and notify them of the result. Since the return of Bishop J. B. Salpointe, he has done nothing but interfere with business of
352 the Agency thereby endeavoring to cause dissatisfaction and again control of the Papagos. But the treatment they have received at his hands since he came to this section have caused them to lose confidence in him, so that now they look upon him with fear and trembling lest he will make them slaves, as he has already tried to do or take more land from or otherwise injure and molest them.'"

Letter from the same Wilbur to the same Commissioner written at Tucson, Sept. 15, 1874, found in the report of the Commissioner of Indian Affairs for 1874, pages 290-292, in part as follows:

"And now permit me to refer to a new and dangerous difficulty that has arisen in the path of my official duty to the Papago Indians. Since this agency has been given to the Catholic Church, I have done everything in my power to aid the church in its religious teachings and influence among the Indians, believing that I was carrying out the policy of the government by so doing. But some time ago,

the fact was forcibly impressed upon me that the Bishop and Priests had a larger interest in securing the fruits of the labor of the Indians than in any spiritual good they might be able to confer upon them. As an example, these Indians complain that the Bishop holds a valuable piece of agricultural land obtained from them through promises he has never fulfilled; that frequent attempts have been made to compel them, (the Indians) to give the Bishop 1/10 of all their earnings, as a tithe for the benefit of the church, and they complain that, generally the designs and actions of these Priests, if not kept under strict control, or entirely removed with lead directly to placing them (the Indians) as in olden times, in a condition of vassalage and servile bondage. My own views, from practical experience, correspond with those of the Indians and, in proportion as I have not acceded to unjust demands, I have become obnoxious to these priests, and constant and frequent misrepresentations have been made to these Indians and to citizens, in order to weaken my influence over my charge.

The whole of said letter was introduced in evidence as Defendants' Exhibit 14-a.

Letter, dated August 21, 1874, from H. R. Clum, Acting Commissioner of Indian Affairs, to R. A. Wilbur, Agent, as follows:

"SIR:

In reply to your letter of the 21st ultimo I have to say, that if any of the Indians of your Agency have been informed that 'Captains of tribes' are entitled to pay from the Government, the information is incorrect, as such has not been the practice of the Indian Department, nor is there any law authorizing such payments to be made."

Said letter introduced as Defendants Exhibit 15-a.

353 Letter dated May 31, 1874, from Chas. Hudson, U. S. Indian Agent, Pima Reservation, Arizona, to J. Q. Smith, Commissioner of Indian Affairs, as follows:

"Until the recent consolidation of the Pima and Papago agencies, the latter tribe were under the auspices of the Roman Catholic Church, which obtained, and through the Bishop of the Diocese, exercised considerable influence over them, and their agent in the management of their affairs. There is an old church (San Xavier del Bac) upon the reservation which together with the school house (the latter built with government funds but adjoining the church) is claimed and occupied by the Bishop who assured my predecessor that he would hold and defend his title to the end. As yet I have taken no action in regard to these matters, but desire the fullest instructions as to the course which it is your wish that I shall pursue both as regards the occupancy of the land by Mexicans and the claims of the church to the buildings thereon."

Introduced in evidence as Defendant's Exhibit 16-a, Part of letter dated May 3, 1882, at San Xavier, Papago Village, Arizona, 9 miles south of Tucson, from Ascension Rios to the Secretary of the Interior, Washington, D. C.

"SIR:

As the man at the head of Affairs of Indians and land office, and in whose sentiments of justice we think to have cause to confide, we under the extreme necessity of the case, take the liberty to appeal for getting such justice as the otherwise benevolent Government of the U. S., are supposed to accord to its poor wards the simple uneducated Indians. Excuse prior to the setting forth some of our present most pressing grievances, a short sketch of our past such as it is known in this respect—we will quote a work on Arizona of 1878 by Mr. Richard J. Hinton, San Francisco. * * * There are no Indians on the Continent that have been so long exposed to civilization, and Christian influences."

And under the words, "Christian influences" he has written the words "So called."

The Court: That is Mr. Hinton?

Mr. Fraser: Then another quotation from the same author, which I am obliged to read in order to make clear the comment which follows, is as follows (reading):

"Page 395: The work of the missionaries is still seen in the industry, fidelity and chastity of the Papago Indians, and in a less degree testified to by the Pimas."

354 Then in brackets after that is the following (reading):

"(Still we pray to God and you to be free of all dealings with the French Roman Catholic Bishop and Priests of Tucson) who have done us and tried to do us much harm."

The whole of said letter introduced in evidence as Defendant's Exhibit 17a.

Whereupon the defendant introduced in evidence copies of letters, as follows:

"Dept. of the Interior,

General Land Office, Washington, D. C.

Mar. 26, '81.

"R. F. Hunter, Esq.,
Washington, D. C.

SIR:

You are advised that by my letter of this date the Register and Receiver at Florence, Arizona, have been advised that action upon the mineral entry of Solomon Warner for the Santa Tomas mine, will be suspended for a period of 90 days in order that the Papago Indians may file the certificate of the U. S. Surveyor General of Arizona that application has been made to him to examine the evidence of a Spanish or Mexican Grant for pueblo or Village purposes.

Very respectfully,

(Signed)

J. A. WILLIAMSON,
Commissioner."

"225 East Capitol St.,
Wash., D. C., May 23, 1881.

"Hon. John Wasson,
U. S. Surveyor General,
Tucson, Ariz.

SIR:

I this day mail you application for an examination of evidence in behalf of the Papagos of Ariz., also copy of letter of Com. Williamson relative to the same.

Owing to the fact that during the heated term, the Papagos will be absent from their villages and thus render it difficult to secure important evidence, I have to request that the examination may be deferred until fall. I would also be obliged if you would give me timely notice of the date, as I desire to be personally present.

If not inconsistent, I would be obliged if you would send me copies of certificates called for in letter of Commissioner.

Very respectfully,

R. F. HUNTER."

Washington, D. C., May 23, 1881.

"Hon. John Wasson,
U. S. Surveyor General for Ariz.

SIR:

Under advisement from the Commissioner of the General Land Office, of date March 26, 1881, copy of which is herewith transmitted, I have the honor as attorney and counsel for the inhabitants of the Papago village of San Xavier del Bac, and sub-villages of Arizona territory, to make application for an examination
355 by you of evidence in support of their claims to lands granted or belonging to them for pueblo or village purposes, under and by virtue of laws, ordinances or decrees of Spain or Mexico as recognized and presumed under the laws of the U. S., and the ruling of the Dept. of the Interior.

I have also to respectfully request that I may be duly advised as to the date on which such evidence will be examined by you, and that your certificate that this application has been made, may be filed with the General Land Office as required by the instructions of the Commissioner.

Very respectfully,

R. F. HUNTER,
Atty. and Counsel for Papagos."

"Washington, D. C., May 23, 1881.

"Hon. John Wasson,
U. S. Surveyor General of Ariz.

SIR:

In accordance with advisement from the Hon. Commissioner of the General Land Office of date March 26, 1881, copy of which is herewith transmitted, I have the honor as attorney and counsel for the inhabitants of the Papago village of Cacca, and the subvillage of

Sancita, both of the territory of Ariz., to make application for an examination by you of evidence in support of their claim to lands granted or belonging to them for pueblo or village purposes under and by virtue of the laws, ordinances and decrees of Spain and Mexico, as recognized and presumed under the laws of the U. S., and the rulings of the Dept. of the Interior.

I have also to respectfully request that I may be duly advised as to the date, on which such evidence will be examined by you; and that your certificate, that this application has been made, may be filed with the General Land Office, as required by the instructions of the Commissioner.

Very respectfully,

R. F. HUNTER,
Atty. and Counsel for Papagos."

"Washington, D. C., June 24, 1881.

"The Hon. Commissioner General Land Office,
Washington, D. C.

SIR:

In accordance with letter of advisement from your office, of date March 26, 1881, applications were, on the 23rd day of May, 1881, duly made to the U. S. Surveyor General of Ariz., to examine the evidence in support of Spanish or Mexican Grants to the Papago Indians of Ariz. for pueblo or village purposes.

As will be seen from the enclosed copy of letter from the Chief Clerk of the Surveyor General said applications were duly received at the Office of the Surveyor General, at Tucson, Ariz., on the 30th of May, 1881—but by reason of the absence of the Surveyor General from the territory, his official action thereon, as called for in said letter of advisement, could not be had, and his continued absence has undoubtedly prevented him from forwarding your office, his

356 certificate that such applications have been made within the period of 90 days, during which the mineral entry of Solomon Warner, for the Santa Tomas mine has been suspended. In view of these facts, and that as counsel for said Papagos, have fully complied with the requirements of your office, relative to their pueblo claims, I have to respectfully request that such other action may be had by you in the premises, as will fully protect the rights of my clients.

Very respectfully,

R. F. HUNTER,
Counsel for Papagos."

"U. S. Surveyor General's Office.

Tucson, Ariz., June 27, 1881.

"R. F. Hunter, Esq.,
East Capitol Street,
Washington, D. C.

SIR:

In my absence, May 30, your letters of May 23rd and enclosures were received and acknowledged. On my return, June 11, I was obliged to immediately enter upon the hearing of another private land case which with other pressing business, consumed my time to date. I have today looked into your papers and request therein, and must say that you have presented no authority, emanating either from the Papago Indians, or their lawful U. S. Agent, or from the Interior Dept., at Washington, showing that you are a duly appointed attorney for said Indians, and until you do present proper authority in the premises, I shall not feel warranted in taking any decided action in any of the several cases you present.

The copy of Commissioner's letter of date March 26, 1881, shows that he addressed you simply as R. F. Hunter, Esq., and not as an attorney at all or for anybody. I respectfully call your attention to the following facts:

1. April 9, 1881, a delegation of Papago Indians consisting of their first and second chiefs and 4 assistant chiefs who, with the said first and second chiefs form the Papago Council and highest tribal authority, called at this office. They were accompanied by an interpreter. They came to represent their rights to the land at San Xaxier del Bac. I gave them a patient hearing of nearly a whole day. They did not say or intimate that they had any counsel or attorney to represent them. I should have been very glad, indeed, if they had come with a competent attorney, for not any important facts were obtained from them.

2. May 26, 1881, I communicated in detail all that transpired at the said hearing on April 9, to the U. S. Agent of the Papago Indians, and on the 30th, same month, he acknowledged receipt thereof, and said that he had submitted my said communication to the department with strong recommendation for 'prompt and effective action'; but he did not say or intimate that anyone was then acting as attorney for said Indians in the cases you present or in any other.

"The copy of Commissioner's letter of March 26, forwarded by you, says: 'that action upon the mineral entry of Solomon Warner for the Santa Tomas mine, will be suspended for a period of 90 days in order that the Papago Indians may file the certificate of 357 the Surveyor General' etc., etc. The Papagos have not called for any such certificate, nor has anyone done so for them or in their name, except yourself in an indirect way, and you present no evidence of authority to act for them, and I have no advice or intimation from any person or officer that you are so authorized.

I shall be very glad to enter upon an examination of the claims of the Papagos to lands under the laws and usages of Spain and

Mexico, when presented by themselves or by any person duly authorized to do so by them or by the Dept. of the Interior. The evidence of such authority must accompany the presentation of such claims.

Very respectfully,

JOHN WASSON,
U. S. Surveyor General."

"Dept. of the Interior, General Land Office.

Washington, D. C., July 8, 1881.

R. F. Hunter, Esq.,
City.

SIR:

In response to your verbal request, I have to state that the files of this office show that you appear as attorney for the Papago Indians against the issue of patent to Solomon Warner for the Santa Tomas mine, Florence, Arizona, Mineral Entry No. 9.

Very respectfully,

N. C. McFARLAND,
Commissioner."

"U. S. Surveyor General's Office.

Tucson, Ariz., April 1, 1882.

"Hon. C. H. Oury, M. C.,
Washington, D. C.

DEAR SIR:

At the request of Mr. Solomon Warner, I enclose you my letter of this date to him and also copies referred to therein. I am abundantly satisfied that Mr. R. F. Hunter has no standing as an attorney and counsel for the Papago Indians, but, of course, it is just possible in this I am mistaken. He could long since have had hearing if he is such attorney and had presented some sort of evidence in point.

Very respectfully, your obedient servant,

JOHN WASSON,
U. S. Sur. General."

"U. S. Surveyor General's Office.

Tucson, Ariz., April 1, 1882.

"Solomon Warner, Esq.,
Tucson, Arizona.

DEAR SIR:

Referring to the letter of the Commissioner of the General Land Office of date March 20, 1882, addressed to Hon. G. H. Oury and handed to me yesterday by yourself, I have to say: Said letter contains this statement: 'Evidence has been filed in this office by the attorney representing the Papagos that such application (for a cer-

tain certificate) has been made to the Surveyor General of Arizona, and I respectfully recommend that the Surveyor General of Arizona be applied to for information as to the present status of the case.' Regarding this point in the matter I have to respectfully call your attention to engorsed copy of a letter of date Washington, D. C., May 23, 1881, signed 'R. F. Hunter' only. The last clause of this letter says the writer would be obliged if I would send him 'copies of certificates called for in the letter of Commissioner.'

358 I had given no certificates. No one has applied to have me do so. The letter of the Commissioner was addressed to R. F. Hunter, Washington, D. C., 'and not to him as an attorney or representative of the Papagos or anybody; and to this day, not anybody has applied for such certificate in his own name or that of the Papagos.' The copy of Commissioner's letter shows that the suspension of action for 90 days in the case referred to was 'that the Papago Indians may file the certificate of the Surveyor General of Ariz., that application has been made to him to examine the evidence of a Spanish or Mexican grant for pueblo or village purposes.' For various sound reasons not necessary to state in this letter, I did not recognize 'R. F. Hunter' as attorney for the Papago Indians, but enough of them appear in my letter to him of date June 27, 1881 (copy herewith) and to which I have received no reply.

I may say, however, that Mr. Hunter transmitted 16 written applications for examination of evidence in support of the claims of Papago Indians to land granted to them, etc., by Spain or Mexico, with his letter of May 23, 1881, all being of same date save one of 26th same month. All these applications are signed by 'R. F. Hunter as attorney and counsel for the Papagos.' If he held such relation to the Papago Indians, he could have readily satisfied this office and the examinations he asked would long since have been begun and continued with vigor." I think the remainder is immaterial and does not refer to this at all.

Then the next is merely a note to the Commissioner of the General Land Office by this member of Congress, Mr. G. H. Oury, sending correspondence with the Surveyor General of Arizona, and asking that in view of what was said there and in other letters, the claim of Warner be passed and patented. That was April 8, 1882. I will not read that letter.

"Washington, D. C., April 18, 1882.

"Hon. Commissioner Gen. Land Office.
Washington, D. C.

SIR:

In reply to your favor of the 13th relative to the application of Hon. G. H. Oury for issuance of patent to Solomon Warner, for the Santa Tomas mine, Florence, (now Tucson) Mineral Entry No. 9, I would submit that such entry should not be confirmed by patent for the reasons heretofore assigned, i. e., that said entry is upon lands belonging to the Papagos, under village grants from the Kingdom of Spain. The recital made by you as to the action had in the

premises is incomplete. Under instructions from your office of date March 26, 1881, said patent was suspended for 90 days, to enable me to make application to the Surveyor General of Arizona, to examine evidence in support of such village grants. In compliance herewith I filed specific applications with that officer, and their receipt at his office was duly acknowledged by his chief clerk on May 31, 1881—subsequent thereto, the Surveyor General on the technicality that I had not signed my name as attorney, informed me he could not recognize me until I filed with him powers of attorney

359 from the Papagos, or evidence from your office that I was recognized as their attorney. In order to comply with the wishes of the Surveyor General, I had addressed me a communication from your office, showing that I was the recognized attorney for the Papagos in the matter in reference.

This letter was duly forwarded by me to the Surveyor General, and since that date I have not heard anything whatever from him, notwithstanding the fact, that in my applications I had specifically requested him to set a time for hearing the evidence, only requesting, that it might be heard in the fall, as during the summer months, the Papagos are generally absent from their villages and it would therefore be difficult to secure the attendance of these required, and also because of the heat of the climate, during the summer months, I did not think it would be prudent for me (being unacclimated) to remain there for several weeks. So, therefore, there has been no dereliction on my part, in maintaining the rights of my clients, and as the Surveyor General has failed to file the certificate called for by your letter of March 26, 1881, and which certificates I am clearly entitled to, I most earnestly protest against the issuance of any patent to Warner on said Mineral Entry, and ask that the Surveyor General of Arizona, be directed to supply said certificates, and to designate a time, convenient to all parties in interest, to hear evidence on behalf of the Papagos.

And for the reasons assigned last year, as the summer is now approaching that such time be fixed for the ensuing fall.

Very respectfully,

R. F. HUNTER,
Atty. for Papagos.

"225 East Capitol St.,
Wash'n, D. C., May 10, 1882.

"John Wasson, Esq.,
U. S. Surveyor General for Arizona.
Tucson, Arizona.

SIR:

Herewith I send you copy of letter from Comm'r Gen'l Land Office, setting forth my recognition as attorney for the Papago Indians. This letter was *accured* in accordance with your advisement of June last, and copy was duly forwarded you on its receipt, I am now however advised by the Commissioner, that such copy failed to reach you and under the instructions of said letter, I mail this copy.

Should you require anything additional I will upon notification to that effect cheerfully supply it. For the reasons heretofore given by me I would be pleased if you could defer examining evidence until fall.

Very respectfully,

R. F. HUNTER,
Counsel for Papagos."

"225 East Capitol Street,
Washington, D. C., May 10, 1882.

"Hon. N. C. McFarland,
Commissioner General Land Office.

SIR:

I have the honor to inform you that under advisement of your favor of the 4th inst., I have again mailed U. S. Surveyor General of Arizona, copy of your letter to myself, of date July 8, 1881, wherein recognition is given me as attorney for Papago Indians in the matter of issue of patent to Solomon Warner for Santo Tomas mine, Florence, Ariz., Mineral Entry No. 9. I trust that this will satisfy
360 the Surveyor General of my right to act as the counsel of said Indians.

Very respectfully,

R. F. HUNTER,
Counsel for Papagos."

"U. S. Surveyor General Office.

Tucson, May 17, 1882.

"R. F. Hunter, Esq.,
225 East Capitol St.,
Wash'n, D. C.

SIR:

On 10th instant, I received a letter from the Commissioner, General Land Office, of date 4th inst. a copy of which is herewith enclosed. Yesterday I received yours of the 10th inst. I am somewhat surprised at this correspondence in several particulars. I received no response to my letter to you on June 27, 1881, but have to every other letter of importance for several years past. I have since June 27, 1881, been constantly ready, and am now ready, to enter on an examination of the claims you present in behalf of the Papago Indians upon the presentation by you of proper authority to act as attorney for the Papagos. I clearly indicated to you in my said letter of June 27, the sources of such authority, viz: The Papagos themselves their lawful U. S. Agent or the Interior Dept. The mere copy of a letter from the Commissioner of the General Land Office to the effect that the files of his office show that you 'appear as attorney for the Papago Indians against the issue of patent to Solomon Warner for the Santa Tomas mine, Florence, Ariz., Mineral Entry No. 9 is no evidence whatever that you are the duly constituted attorney of

the Papago Indians to represent them in 16 other and separate cases of claims to lands under the laws, usages and customs of Spain and Mexico. You have not presented proper authority to act in any single case of the 16 presented, and to warrant the Government in undertaking such important proceedings. I hold it both prudent and necessary that you should show yourself formally authorized in each case by one of the following ways:

1. Appear in person with the chief or chiefs of each pueblo or village, who are recognized as such by the Indians of such pueblo or village, or by their lawful U. S. Agent, and have him or them advise this office in some certain way, that they have constituted you their attorney, or express a wish that this office recognize you as attorney for the purposes set out in the petitions you present in their behalf.

2. A letter, not copy, from the U. S. Agent of the Papagos, or from the Commissioner of Indian Affairs, or from the Sec. of the Interior, to the effect that you are actually the attorney for Papagos in each of the several cases you present in their behalf.

It must be apparent to you that such important investigations should only be made upon petitions presented by a party or parties duly authorized in each one, and that evidence of such authority is a proper condition precedent to such investigations. In this connection I respectfully call your attention, to marked paragraphs on pages 6, 7 and 8 of pamphlet copy of Department instructions governing proceedings such as contemplated by the 16 petitions

361 you present in the name of the Papago Indians, and advise you that such a substantial compliance therewith is necessary in each and every case.

I respectfully invite your careful attention to the whole of the Commissioner's letter of the 4th inst., and especially to the closing part beginning with the words, 'At the expiration of a reasonable time,' etc. In view of the fact that your petitions in the several cases had formal attention of this office on June 27, 1881, and that you were then advised that this office was ready to proceed with the examinations asked for therein upon the simple formality on your part of presenting evidence of your authority to act in the premises, and of the further facts that none of your said petitions nor any of your communications even allege that the said 'Santa Tomas' mine is upon any of the land you claim in behalf of the Papagos, whereas to justify issuance of the indicated certificates to the possible injury of a man who has shown good faith in the legality of his claims by an expenditure of considerable labor and money, there should be some proof that the said mine is upon one of the said claims specified by name which you present, I told that 'reasonable time' will have been given you to perform your part of the duties indicated in Commissioner's letter by giving you 90 days from date, and after that date you are hereby respectfully advised that this office will comply with its duties in the premises in accordance with the facts as they there appear on the files of this office.

To enable me to readily investigate and rightly decide upon

land claims such as you present, I have made very careful and extensive researches of controlling authorities in the premises, and assure you that I am prepared at any time to give your cases attention and prompt decisions.

Very respectfully,

JOHN WASSON,
U. S. Surveyor General.

"225 East Capitol Street,
Washington, D. C., May 27, 1882.

"John Wasson, Esq.,
U. S. Surveyor General,
Tucson, Ariz.

SIR:

I am in receipt of your favor of the 17th and in reply would say, that desiring to comply with the instructions therein contained, I made application to the Office of Indian Affairs for a letter indicating my recognition as attorney for the Papagos Indians of the several villages in whose behalf I have filed applications before your office. A consideration of my request caused a reference thereof to the law office of the Dept., of the Interior, where, it was determined that in view of the fact that I am a practicing attorney at law, no evidence of my right to represent my clients could be demanded of me. That a distinction is to be drawn between an attorney in fact, and a lawyer, that while the former must act under formal delegated power, or the recognition of appropriate officers of the government, the latter is exempt from such requirements.

I merely cite this ruling as a reason for not sending letter
362 from Commissioner of Indian Affairs or Sec'y of Interior.

On the occasion of taking evidence, if required, I will submit due authority to act.

I would however, suggest, that as great difficulty will be encountered in securing the attendance of Indians, owing as I am advised to their being scattered over the territory during the summer months, that practically as speedy a determination of the case might be secured by having the evidence taken in the fall. This suggestion is not made for the embarrassment of any interest, but for the reasons stated, and as heretofore stated for the additional reason, that I question the propriety of my spending several weeks in Tucson during the hottest season, being unacclimated.

Permit me to thank you for the courtesy of your letter and to say that it is in a great measure due to your research that I am placed in a position to advocate the rights of the Papagos.

Very truly,

R. F. HUNTER,
Counsel for Papagos.

"U. S. Surveyor General's Office.

Tucson, Ariz., June 14, 1882.

"R. F. Hunter, Esq.,
225 East Capitol St.
Washington, D. C.

SIR:

Your letter of 27th ultimo was received in due time and has had careful consideration, and I now have to inform you that I see no reason to modify the terms of my letter to you of the 17th ultimo. I regret that you have apparently overlooked the fact that my said letter of the 17th May, was carefully prepared in obedience to the explicit directions of the Commissioner of the General Land Office in his letter of 4th ultimo a copy of which was forwarded to you with my said letter. Following are extracts from the Commissioner's said letter:

'By letter of this date, Mr. Hunter was advised that it would be necessary for him to immediately file with you evidence satisfactory to you that he is the duly authorized agent of the Papagos,' etc.

'At the expiration of a reasonable interval of time if proper application has not been made to you you will so report,' * * * 'but if Mr. Hunter files satisfactory evidence that he is counsel for the Papagos,' etc.

I am lawfully obliged to obey these instructions and it is to the highest interest you claim to represent, that they be complied with. The facts that a delegation of Papagos consisting of the head chief and assistant chief (as detailed in my letter to you of June 27, 1881) made a formal call upon me in this office on April 9, 1881, only about one month prior to the date of your 16 petitions, and at a great length detailed their right to the land of and at San Xavier del Bac for which an examination is asked in one of your petitions, and neither then or at any subsequent calls made here, did they intimate they had employed an attorney or counsel, naturally enough led me to suppose they had neither attorney nor counsel, at least none in the case of San Xavier de Bac. I
363 will cheerfully act upon an instruction of either the Commissioner of the General Land Office or Hon. Secretary of the Interior, that I must accept your own statements that you are an attorney at law and also attorney for the Papagos in the 16 cases you present, but at present I am bound to obey the Commissioner's existing instructions, heretofore cited.

Again, I have always recognized attorneys at law, known to me as such, in the presentation of claims in behalf of any person except Indians. Indians are treated as wards of the nation. Lands are assigned them by the nation. A bureau of government is charged with the care of such lands and other possessions and interests of the Indians. The executive department has set apart nearly 2 townships of land at San Xavier del Bac for the exclusive use of Papago Indians and has expelled trespassers therefrom. The Papagos are held to be under the care of the U. S. and have a U. S. Agent specially charged to look after them and their interests. That

agent has several times called upon me in his official capacity during the past 12 months, and consulted me about the rights of the Papagos generally and particularly of those to land at San Xavier del Bac, and at no time did he intimate that anyone but himself represented the landed or other interests of the Papagos. In view of these and relative facts that will readily suggest themselves to you, (independent of the Commissioner's positive instructions in point) I feel compelled to require some proper evidence that you sustain the relation of attorney or counsel for the Papagos in the 16 cases you present in their behalf.

I have said it is to the highest interests you claim to represent, that you file or in some proper way exhibit here evidence of your relation as such attorney or counsel, and I feel that if I failed to require it, I would justly subject myself to censure. I call your attention to the enclosed extract from a report by the Private Land Claims Committee of Congress in which the Board of Land Commissioners charged with an original investigation of a private land claim in the name of the "Heirs of Philip Renault" was severely censured for not doing what the Commissioner and myself require of you as a condition precedent to proceedings involving very large interests of both Indians and citizens. The whole report from which the extract is copied is numbered 377, 1st Session, 23rd Congress and made to the house March 28, 1834.

The Papago Indians doubtless have rights to lands just the quantities and localities of which can only be determined by a painstaking investigation. I have spent much time in preparing therefor. I am ready to begin such examination and think I am competent to conduct it and reach conclusions in exact accordance with the laws, usages and customs of Spain and Mexico. The work has been too long delayed. Conflicting interests are constantly increasing. The highest interests of all classes of people in southwestern Arizona demand the earliest possible adjudication of their respective rights. As at present advised, in view of the interests generally involved as well as the particular questions under immediate consideration, I must adhere to the conditions set out in my letter to you of date May 17, 1882.

364 My anxiety to properly proceed in the cases you present, induces me to this day submit a copy of my letters to you of date June 27, 1881, and May 17, 1882, and also of this letter with yours of 27th ultimo to the Commissioner, with request for an approval of my action in the premises, or a specific instruction in point.

Very respectfully,

JOHN WASSON,
U. S. Surveyor General."

"U. S. Surveyor General's Office.

Tucson, Ariz., June 14, 1882.

"Hon. N. C. McFarland,
Commis'r Gen'l Land Office,
Wash., D. C.

SIR:

Referring to the instructions contained in your letter 'N' of date 4th ultimo, I have to respectfully represent that I have endeavored to do my duty in the premises, and that Mr. R. F. Hunter referred to in your said letter is apparently not inclined to comply with what seems to be the reasonable requirements of this Office; therefore, I submit copies of documents in relation thereto with a view to have you set me right if I am wrong, viz:

Then he gives a list of all the letters that I have been reading, and he specifically asks instructions on these points (continuing reading):

1. Shall I accept the mere statements of Mr. R. F. Hunter that he is an attorney at law and also attorney or counsel or both for the Papago Indians in the 16 cases he presents by petitions as per copies herewith, and conduct the examination accordingly?

2. Shall I extend the time beyond the 90 days given Mr. Hunter by my letter of the 17th ultimo, to enable him to comply with the instructions contained in your letter of May 4, 1882.

In this connection, I regard it my duty to advise you to-wit: Santiago Ainsa, a Notary Public (and respectable attorney at law in Tucson) verbally informed me a few weeks since, that a man named R. F. Hunter hailing from Washington, D. C., was in Ariz., early in 1881, that while here the said Hunter brought before himself, a notary public, a number of Papago and Pima Indians with over 100 deeds to lands by said Indians to the said R. F. Hunter, which said deeds were duly acknowledged by said Indians before himself (Ainsa) as Notary Public. Whether the petitioner R. F. Hunter (of Washington, D. C.) for the 16 cases referred to, is the R. F. Hunter (of Washington, D. C.) who obtained the deeds from the Indians as aforesaid, I am unable to say, but the coincidence of names and residence tends to raise a presumption in my mind that they are one and the same person, and if they are, is it not a proper precaution on my part to require him to produce his authority for acting as attorney in the name of Indians who have probably deeded to him whatever rights they possess to lands in Arizona.

365 It is needless to add that the investigations contemplated, to be of real value and reliability will involve much careful labor, a labor, however, I am ready and willing to enter upon aright in pursuance of petitions presented by a duly authorized agent or attorney.

Very respectfully, your obedient servant,

JOHN WASSON,
U. S. Surveyor General."

"U. S. Surveyor General's Office.

Tucson, Ariz., Aug. 16, 1882.

"N. C. McFarland,
Commissioner General Land Office,
Washington, D. C.

SIR:

Referring to your letter (N) of May 4th, 1882, date. I have to advise you that Mr. Hunter was given until the 15th of August instant to file the evidence required by your letter and that he has not filed said evidence or otherwise responded to the letter from this office up to date.

Respectfully, your obedient serv't,

R. C. POWERS,
Chief Clerk.

"225 East Capitol St.,
Washington, D. C., Sept. 4, '82.

"Hon. Commissioner, General Land Office.

SIR:

Replying to your favor of Aug. 31, relative to the claim of Solomon Warner upon the Santa Tomas Lode, and my failure to file with the Surveyor General of Ariz., the power of attorney called for by him in his letter to me of May 17, last, and the action that will be had by your office relative to same claim allowing it to proceed to patent—I have to advise you, that under said letter of May 17th, the alternative was given to furnish either the power of attorney asked for, or an authorization from the Office of Indian Affairs, that I was recognized to act for or represent the Papagos. In accordance with said letter I proceeded to the Office of Indian Affairs to secure such authorization, and the question arising as to whether they could grant it or not—a reference was made to the law office of the Dept., of the Interior, where it was held and decided that as I was an attorney at law no authorization or power of attorney was necessary. That by virtue of being such attorney at law, no demand could be made upon me to file formal evidence of my right to represent my clients. The Surveyor General of Ariz., was duly advised by me of this decision which is a recognized principle of practice. In accordance with former instructions from your Dept., I filed my application, as the legal counsel of the Papagos with the Surveyor General and hold a recognition of their receipt. This officer, apparently desired to force an issue that was not in the interest either of good government or the Papagos, and by an arbitrary decision and ruling of his own, forced the determination of a question involving the rights of my clients, at a time he well knew it would be difficult if not impossible for me to secure the attendance of witnesses.

I have in view of these facts to formally protest against the confirmation of patent of the claim of Solomon Warner to said Santo Tomas Lode.

366 Very respectfully,

R. F. HUNTER,
Counsel for the Papagos."

"U. S. Surveyor General's Office.
Tucson, Arizona, Sept. 7, 1882.

"N. C. McFarland,
Commissioner of the Gen'l Land Office,
Washington, D. C.

SIR:

Referring to Dept. letter marked "N" of August 31st, date, in regard to opportunity afforded R. F. Hunter, Esq., of Washington, D. C., to present evidence to this office showing himself to be the duly authorized attorney for the Papago Indians, I have to say that report in regard thereto was made from this office by letter of August 16, 1882, date. Said letter reported the fact of Mr. Hunter having failed to produce the necessary evidence to entitle him to recognition as an authorized attorney for said Indians.

Respectfully, your ob't serv't,

R. C. POWERS,
Chief Clerk."

The foregoing series of letters was introduced in evidence as Defendant's Exhibit 18a.

Whereupon a U. S. patent to the Santa Tomas Lode, mining claim to Solomon Warner, was introduced in evidence as Defendants' Exhibit 19. This exhibit is in the usual form of such patents and covers the property referred to in the preceding correspondence.

Thereupon defendants introduced in evidence as Defendants' Exhibit 20, a letter from Robert F. Hunter to Hitchcock, Secretary of the Interior, a portion of which was read, as follows:

"208 4th St. S. E., Wash., D. C., Feb. 19, 1903.

"To the Hon. Ethan A. Hitchcock,
Sec. of the Interior,
Wash., D. C.

SIR:

Your relator, respectfully submits as follows: to wit: That at the date the U. S. took possession of the territory ceded by Mexico, under the stipulation of the Gadsden Treaty, as regards Mexican citizens and their property, the Papago Indians, of the new territory of Ariz., were, at such dates of cession and taking possession, citizens of Mexico, dwelling in fixed abodes, as communities and pueblos or villages holding, seized and possessors of their lands, by actual seizin and occupancy as individuals, holding in common, with confederations of villages for protection against tribes of wild nomadic Indians, as they had held and were seized through centuries by their ancestors,

as aboriginal territorial owners of the soil; in accordance with their usages and customs and in and to which proprietary holdings of the lands, they were continuously respected and protected by Spain and Mexico, under the laws, usages and customs, of said government."

367 And so on at great length. I will read any part or leave out any part that counsel desires. I merely desire to have it appear that it checks up practically the same claim that is set up here.

Whereupon the plaintiff introduced in evidence a letter dated March 9, 1903, by Robert F. Hunter to the Secretary of the Interior, referring to Southern Pacific Railroad Company, relative to a right of way through Papago country, which statement is really a brief against its right to do so at that time. Said exhibit was introduced as Exhibit 21, to show these facts alone and is not otherwise material. On June 3, 1903, the Acting Commissioner of Indian Affairs wrote the Secretary for instructions on the matter raised by Mr. Hunter and if the matter should be submitted to the Attorney General for an opinion. On March 5, 1903, the Commissioner of Indian Affairs wrote the Secretary of the Interior calling attention to the size and importance of the territory involved and asked for further instructions.

Said two letters were introduced in evidence as Defendants' Exhibit 22.

Whereupon defendants offered in evidence a letter reading as follows:

"Dept. of the Interior.

Wash., D. C., June 16, 1903.

"The Commissioner of the General Land Office.

SIR:

On Feb. 19, 1903, Mr. Robert F. Hunter filed in the Department a communication in which it is contended that the right and title to all that country bounded on the north by the Gila River, and on the south by the boundary line between the U. S. and Mexico, and on the West by the Colorado River, belongs to and is vested in the Papago Indians. He demands that all grants, patents, certificates or other evidence of title issued by the U. S., for any lands within the limits so defined, be vacated and annulled. The land embraced in said limits is a part of the territory described in the treaty of Dec. 30, 1853, between the U. S. and the Republic of Mexico, and known as the Gadsden Purchase. The relator alleged that before said treaty was entered into the lands above described had been so completely severed from the public domain of Mexico, that no right of property in said land of any kind whatever passed to the U. S. by virtue

368 of said treaty; that said lands, known and designated as the Papaguera, had prior to said treaty been held, occupied, used and possessed by said Indians as citizens of the Republic of Mexico; and that the proprietary right of said Indians in said land is fully

protected by that provision of the treaty respecting the rights of private property. He further contends that the right and title of the Papago Indians to said land has never been extinguished by treaty with the U. S., and that said title is still outstanding.

It is not claimed that the U. S., has interfered with or in any manner disregarded the rights of said Indians as to any lands that they may have acquired as pueblos or for any other purpose under grants or titles from the governments of Spain or Mexico, but it is alleged merely that the land was 'owned, occupied and possessed by the Papago Indian citizens by descent, as aboriginal proprietors of the soil, not as mere occupants with perpetual possession.' If the tenure of the alleged holding of the Indians is not by grant emanating from the Government of Spain or Mexico, it is not such a property right as was provided for and protected by the treaty. The mere possession of the land as Indian country, with the right of use, did not prevent it from passing under the dominion of the U. S., as public lands, whatever the obligation of the U. S., to the Indians might be.

All the territory above described has been treated as public land, except such portions as are embraced in private claims, including the villages and lands held by pueblo Indians by grants under the laws of Spain and Mexico, and many of such claims have been confirmed under the laws made and provided. Out of the public lands remaining specific reservations have been created which are deemed ample for the needs of the Indians. There is nothing in the papers submitted to show in whose interest or by what authority the relator appears, but, independently of this, no reason is shown why the department should take cognizance of the matters alleged in said communication. Where lands have been disposed of as public lands, private rights have been acquired and the Executive Department of the Government has no longer jurisdiction or control of them.

The Department is not sufficiently impressed with the contention of Mr. Hunter to withhold any of the remaining lands from disposal as public lands, or to make any recommendations to the Department of Justice in relation to those that have been disposed of. You will so advise him. The papers are transmitted to your office for filing.

Very respectfully,

E. A. HITCHCOCK,
Secretary."

Which letter was received in evidence as Defendants Exhibit 23.

Whereupon Defendants' Exhibit 24 was admitted in evidence, which is as follows:

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DEFENDANT'S EXHIBIT 24

Memorandum of Agreement.

Memorandum of Agreement executed in duplicate this 17th day of March, 1911, between Robert F. Hunter, Trustee, of Washington, District of Columbia, party of the first part, and R. M. Martin,

of Los Angeles, State of California, party of the second part, witnesseth:

Whereas, the parties hereto are desirous of entering into a certain agreement, a copy of which is hereto attached and marked Exhibit "A."

Now, therefore, the party of the first part hereby agrees that he will, upon demand of the party of the second part, at any time on or before May 17, 1911, execute said agreement in consideration of the monies paid and agreed to be paid by the party of the second part, and the other agreements hereinafter contained on the part of the party of the second part.

And the said party of the second part, in consideration of the agreement of the party of the first part, to execute said agreement, Exhibit "A" hereto, agrees that he will pay or cause to be paid to the said party of the first part upon the execution of this contract, the sum of One Hundred (\$100.00) dollars, the receipt whereof is hereby acknowledged by the party of the first part and that he will pay the said party of the first part the further sum of one hundred (\$100.00) dollars on the 17th day of April, 1911.

Said party of the second part has this day endorsed and delivered to C. B. Guittard a certificate for one thousand (1,000) shares of the stock of the Granite Securities Company, a corporation, which said certificate of stock is delivered to said Guittard as security that said party of the second part will sign said agreement, Exhibit "A" hereto, on or before May 17, 1911, and in the event that he shall fail or refuse so to do, said certificate of stock shall become the sole

property of the party of the first part hereto, and said Guittard is hereby authorized to transfer and deliver said shares of stock to said party of the first part; it being understood that in the event of the failure or refusal of the party of the second part to sign said agreement, the party of the first part shall not have any cause of action for damages against him, but shall accept said payments and said stock in full of any claim for damages by reason of such failure or refusal on the part of the party of the second part.

This agreement shall inure to the benefit of and bind the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the parties hereto have hereunto set their hands the day and year first above written.

R. M. MARTIN.

ROBERT F. HUNTER,

Trustee.

(Duly acknowledged before a Notary Public for Los Angeles County, California, by R. M. Martin, on June 10, 1914.)

EXHIBIT "A."

Memorandum of agreement, executed in duplicate, at Los Angeles, California, this 17th day of May, 1911, by and between Robert F. Hunter, Trustee of Washington. District of Columbia, party of the first part and R. M. Martin, of Los Angeles, State of California, party of the second part, witnesseth:

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Whereas, said party of the second part has caused investigation to be made by his counsel, as to the legal estate and unrestricted power of alienation vested in the respective grantors to said party of the first part, trustee, together with the merits of the case as to all other relevant matters; And

Whereas, said party of the second part desires to acquire three-fourths of the undivided half interest vesting in said party of the first part to ten certain tracts of land, situated in the Territory of Arizona, and vesting in him by, under and through ten respective deeds of conveyance, executed and made to him by the Captains or Chiefs of the villages of San Xavier, Santa Rosa, 371 Cacca, Coyote, Anaca, Quitacca, Quajate, Bajio, Tecolote, and Tesote, the remaining undivided half interest vesting in the Indian inhabitants of said villages;

Now, therefore, it being desirous to have said tracts in their entirety segregated from the public domain of the United States, and a partition thereof made and effected between the parties thereto and hereto of their respective interests, the said party of the second part does hereby obligate himself, his heirs and legal representatives to pay to the said Robert F. Hunter, Trustee, his heirs or legal representatives, the sum of one thousand dollars (\$1,000.00) lawful money of the United States, on the signing of this agreement, the receipt of which is hereby acknowledged by the party of the first part and the sum of one hundred dollars (\$100.00) per month for each and every month that may elapse until the aforesaid segregation and partitions shall be effected, as a part consideration for a three-fourths interest in the undivided half interest vesting in the party of the first part to be hereafter acquired by said party of the second part; and as a further consideration therefor, the said party of the second part does hereby obligate and bind himself, his heirs and legal representatives to take active and energetic steps for securing said segregation and partition by such methods consistent with law as may be found necessary in the premises, and if necessary, in the prosecution for the maintenance and enforcement of such rights of property, that said party of the second part will, at his sole cost, charge and expense, prosecute the same in and before such branches of the Government as may be found necessary, until a decision is reached in the court of last resort, namely, the Supreme Court of the United States, without cost, charge or expense to the Indian inhabitants of said villages, or any of them, or to said Robert F. Hunter, Trustee, his heirs and legal representatives.

372 It being understood and agreed that the total monthly payments to be paid hereunder, shall not exceed in the aggregate the sum of six thousand (\$6,000) dollars, being at the rate of one hundred (\$100.00) dollars per month for five years, and beginning with the month of May 1911—this is done and provided for, in the event that the proceedings contemplated to be taken hereunder shall consume a longer period than five years. And in the event that it should be determined by the Supreme Court of the United States that such segregation should not be made, it is expressly agreed that within thirty (30) days after the public announcement of such adverse decision by said Supreme Court, said

monthly payments shall cease, but in the event the decision of said Supreme Court shall be in favor of said claimants, then such monthly payments shall continue to be made until the date of final partition of the respective interests herein vested or until the payment by said party of the second part to the party of the first part of said sum of two hundred and fifty thousand (\$250,000) dollars at the time and in the manner hereinafter provided—it being expressly understood and agreed between the parties hereto that in no event shall the total sum of the monthly payments herein agreed to be paid to the party of the first part exceed the sum of six thousand (\$6,000) dollars, as hereinafter provided.

It being further understood that in such maintenance and enforcement of rights the said Robert F. Hunter, Trustee will act in an advisory capacity whenever deemed necessary.

It is hereby further agreed and understood between the parties hereto that after such segregation from the public domain of the United States and partition of rights and interests as tenants-in-common, that the said Robert F. Hunter, Trustee, hereby grants an option to purchase the one-fourth of his undivided half interest then remaining vested in him to the said R. M. Martin for the sum of two hundred and fifty thousand dollars (\$250,000) said purchase money to be paid on or before sixty (60) days from the date

373 of the partition of said undivided half interest from the undivided half interest of the respective Indian villages; in default of such payment of \$250,000 at the time and in the manner above set forth, the option to purchase hereby granted shall be null and void and of no force or effect whatsoever at law or in equity.

All proceedings for the segregation of said respective tracts of land from the public domain of the United States are to be instituted and conducted in the name of the Indian inhabitants of the said respective villages or pueblos under and by virtue of the several empowerments to Robert F. Hunter, as evidenced by the general powers of attorney are herein and hereby referred to as a part of this agreement, and said Robert F. Hunter hereby agrees on demand of the party of the second part hereto to delegate to the counsel of the party of the second part power and authority under the provisions of the general powers of attorney, made and executed to him for the Indian inhabitants of said villages, respectively.

And in view of the contingency of death of any of the parties hereto, it is further understood and agreed that such arrangements, consistent with law as may be deemed necessary, will be made and entered upon as will safe-guard and protect the respective rights and interests of the parties to this agreement.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

ROBERT F. HUNTER, [SEAL.]

Trustee.

R. M. MARTIN. [SEAL.]

Signed, sealed and delivered in the presence of—

C. B. GUITTARD.

JENNIE SHUTT.

(Duly acknowledged before a Notary Public for Los Angeles County, California, by Robert F. Hunter, Trustee, and R. M. Martin, on May 17, 1911.)

374 Recorder's Office, Phoenix, Maricopa Co., Arizona.

Filed and recorded at request of Wells Fargo & Co., June 22, 1914, at 2:30 P. M., Book 6 of Agreements, pages 392-395.

VERNON L. VAUGHN,
County Recorder.

STATE OF ARIZONA,
County of Pinal, ss:

I hereby certify that the within instrument was filed and recorded at request of Wells Fargo & Co., June 13, A. D., 1914, 3:35 P. M. Book 12 Miss. Rec. page 467.

Witness my hand and official seal day and year aforesaid.

[SEAL]

P. E. HOWELL,
County Recorder.

Compared and indexed.

Filed and recorded at request of Wells Fargo & Co., July 7, 1914, at 4 o'clock P. M.

W. L. BROWN,
Recorder.

M. O. BENSCOE,
Deputy.

(Certification of County Recorder of Pinal County, Arizona, dated June 11, 1920, to foregoing instrument.)

(Certificate of record of the above instruments in Pima County, Arizona, dated July 5, 1919.)

375 Whereupon defendants introduced in evidence a letter reading as follows:

"No. 62 Cedar St., N. Y., May 18, 1914.

"Hon. Franklin Knight Lane,
Sec. of the Interior,
Washington, D. C.

SIR:

We submit to you herewith a petition dated this day signed by us on behalf of certain Papago village communities in Ariz., setting forth their rights in certain tracts of land in Pima, Maricopa and Pinal counties in that state and asking for protection and relief from your Department, and we respectfully bespeak for that petition your careful consideration and favorable action. Your Department is, we think, familiar with the situation of these village communities, for in 1885 Col. Robert F. Hunter on their behalf presented to your Department a protest against certain action which was threatened and in that connection he placed before your Department the facts showing his authority to act for the Indians, and

under date of Jan. 13, 1885, the chief clerk of your department wrote to Col. Hunter saying among other things:

'The powers of attorney authorizing you to act for the Papago Indians of Arizona are executed in accordance with custom and usage and are authority for you to represent the interests therein designated.'

Moreover in or about Sept. 1913, a gentleman stating that he was an investigator for the Post Office Department acting in this matter at the request of your Department, visited our client R. M. Martin, Esq., of Los Angeles, Cal., who has a large interest in the tracts of land in question, under a contract with Col. Hunter, and the investigator was by Mr. Martin referred to Alton M. Cates, Esq., now of the firm of Cates and Robinson, and Mr. Cates gave to the investigator full information regarding the present situation and the powers of attorney under which we are acting.

Very respectfully,

ROUNDS, HATCH, DILLINGHAM & DEBEVOISE."

Whereupon a duly exemplified copy of the will and proof of death of Robert F. Hunter, deceased, was introduced in evidence as Defendants Exhibit No. 26. The material parts of the will and certificate of death, which is introduced therewith, is as follows:

'The said estate shall be divided into 10 equal parts or shares, save and except the monthly payments to be made to me as trustee, under my contract with R. M. Martin, of Los Angeles, State of California, relative to Papago Indian Lands in the territory of Arizona, said contract being signed on or about May 17, 1911.

Those monthly payments shall be made to Virginia I. Hunter, Jr., and Blanche D. Mangum as trustees or the survivor of them

376 and the same shall apply to the money now on deposit in the name of Blanche D. Mangum and Jennie V. Hunter (Virginia I. Hunter, Jr.) which is expressly as are the said monthly payments to be applied to the support of my beloved wife, Virginia I. Hunter, Sr., and the said Virginia I. Hunter, Jr. In the event that the option to purchase is complied with in my contract as trustee with R. M. Martin, for the sum of \$250,000, then the sum of \$250,000 together with all other estate vesting in me as said trustee shall be divided into 10 equal parts or shares, one of which is bequeathed to each of the following named persons, viz:

And then he names his heirs or relatives.

Whereupon the defendants offered in evidence an exemplified copy of the second account current of the executrix of Robert F. Hunter, deceased, with her report, dated Nov. 15, 1917, the material parts of which is as follows:

Mr. Fraser: After mentioning the Martin contract, in almost the end of the report, is this language (reading):

"Said executrix further reports that all of the moneys collected under the contract aforesaid has been used for the support of the said Virginia I. Hunter, Sr., and Virginia I. Hunter, Jr., under

the terms of said will. * * * Said executrix further reports that the only assets of said estate other than the contract above mentioned, consists in deeds to an undivided interest in large tracts of land in Ariz., which deeds were executed in favor of said deceased during his lifetime by the Chiefs of the various tribes of what are known as the Papago Indians; that the title to the said property has never been legally established and in order that a judicial determination might be obtained as to the title of the same, the contract mentioned in the foregoing account between R. M. Martin and the said deceased during his lifetime was entered into under the terms of which R. M. Martin was to proceed with due diligence at his own expense to take the necessary steps to confirm the title to a portion of said lands described in said deeds; that litigation instituted by the said R. M. Martin under the terms of said contract is now pending in the Supreme Court of the United States of America and is still undetermined; that until the said litigation is determined and the title to the property described in the aforesaid deeds has been established, the estate cannot be distributed, and no action can be taken by the executrix which would be of any benefit to the estate. That all of the property described in the said deeds is situated in the State of Arizona and the only asset over which this court has jurisdiction is the contract with R. M. Martin described in the inventory on file, and the value of this contract is entirely problematical, depending altogether upon the success of determining the title of the property mentioned therein."

377 Whereupon defendants offered in evidence as Defendants' Exhibit 28, a certificate of death of Alton M. Cates on November 23, 1920, issued by the Clerk of the Supreme Court of Los Angeles County, California.

Whereupon plaintiff read into the record parts of an affidavit made by Jose Ignacio, reading as follows:

"STATE OF ARIZONA,
County of Pima, ss:

"Jose Ignacio, being first duly sworn, on his oath says that he is a Papago Indian; that he lives at Santa Rosa, in the county and state above named; that he knew Luis, who for about 20 years, namely, between the year 1870 and the year 1890, approximately, was captain or leading man of the Papago village sometimes called Santa Rosa, being a village in the Santa Rosa valley known by the Papagos as Kiachemuck in the county and state above named; that he knows of his own knowledge that said Luis is dead, and that he died at Kiachemuck, in said county and state about 30 years ago, namely, about the year 1890; that affiant has known the Papago villages in the Santa Rosa Valley for many years and as far back as the year 1880, and that the said Luis, whose death is above referred to; is the only man of that name who was captain or chief or leading man of any one of said villages, or of any village called by white man Santa

Rosa, during the year 1880. Luis, chief of Kiachemuck was my uncle. At the time of his last sickness I was at San Xavier village near Tucson, Ariz. I was notified of his illness and immediately left for Kiachemuck. I got there before my uncle Luis died, was present at his death bed and also helped to bury him."

That is signed by his thumb mark.

Whereupon the plaintiff read into the record the following certificate of the Department of the Interior accompanying maps of 1919 and 1920 of said department, as a correction of the map heretofore introduced by plaintiff, entitled "lands designated as non-irrigable by the Secretary of the Interior, under the provisions of the Enlarged Homestead Act," which certificate reads as follows:

"Pursuant to the Act approved Aug. 24, 1912, I hereby certify that the annexed maps of Ariz., are respectively copies of the June 30, 1919 and June 30, 1920 editions of the maps prepared and printed in the Geological Survey showing lands in Ariz., designated as non-irrigable and enterable under the provisions of the Enlarged Homestead Acts of Feb. 19, 1909 (35 Stat., 639), and March 4, 1915 (38 Stat., 1162), in so far as said lands were vacant, public non-timbered and non-mineral and unaffected by any special provision of law withdrawal or reservation inconsistent with the provisions of said acts."

378 The said map of 1920 is introduced in evidence as Defendants' Exhibit No. 30 to the introduction of which the plaintiff objected on the ground that the map and certificate were prepared, after this suit was started, by one of the defendants, and as a self-serving statement. Objection overruled and exception noted.

Whereupon defendant read into the record from the Report of the Commissioner of Indian Affairs of 1879, page 6, being a report to the Commissioner from A. B. Ludlam, Agent, dated Oct. 6, 1879, Pima agency, Arizona.

"It is surprising how little is known at the East about the actual condition of the Indians and their manner of life, and how degraded and heathenish a race we have at our very doors. I am now writing of the Indians of this territory. Efforts are largely made to educate that benighted of far lands, while comparatively little thought is given to these red-skins of the desert and the forest of our own country."

Then omitting a passage he continues (reading):

"Let me picture an Indian village—not for the eyes of the Hon. Commissioner, who knows all about this Indian life, and has seen '—Indians'—but for the intelligent, the refined, and the Christian people of this country. You are conveyed in an 'ambulance' over a dry, sun-baked road of a desert. In the distance appears numerous half-spherical shaped mounds, with no entrance save a single opening at the ground, and which to enter, as I have done,

one must prostrate himself at first. They are constructed of branches of trees, and straw, and closely woven together with much ingenuity, and covered with dirt. The interior smells and tastes of dirt, and smoke, as no other opening than that described exists, perhaps 20 feet in circumference and 6 feet high in the center. In this nest families burrow, except in the hottest weather, when fires are made on the outside, and food is prepared in the most primitive manner. Around we see scattered rude cooking utensils, old blankets, pieces of clothing, in some cases turkeys and chickens, and litter everywhere; children almost nude; they sit in the dirt and live in the dirt in many instances, with an apology for clothing; their persons covered with the dust about them and literally plastered upon them. The women do much of the work. The 'bucks' as the men are called, are fond of their ponies; are rapid and cool riders. They indulge, as others do in the East, who are more cultivated, in horse-racing and betting, and when it can be procured, whiskey has its baneful effects upon them. As a people they seem content and happy; happy in their degradation and filthiness, seemingly content to remain as they are, with little ambition to change for the better."

379 Then I omit a passage, and that report is signed by A. B. Ludlam, Agent. As recently as 1894, the report of the Commissioner of Indian Affairs, for that year, page 104, has the following as a report of the Pima Agency. Under the paragraph entitled "Wandering Papagos," he has the following to say (reading):

"Wandering Papagos.—The Papagos, except those who have located themselves on the San Xavier and Gila Bend reservations, are nomadic in their habits and roam over the territory lying between the Southern Pacific Railroad and the Mexican line. They are usually found gathered around springs and water holes of their own finding, or wells and tanks of miners and ranchmen, seeking water for themselves and pastures for their cattle. Ant like, they are continually on the move, going and coming, from early harvest time of the Pimas until late in the fall, vacillating between their adopted tramping grounds to the wheat fields of their neighbors."

In the work of Carl Lumhiltz, "New Trails" in Mexico," a work which was introduced as an authority by the plaintiff, on page 24, of that work, speaking of the Papagos, he says (reading):

"The early Spanish missionaries were unable to exercise much influence over this tribe. The indefatigable Jesuit Father Kino, who in the present state of Sonora in 1687 established his first mission, Dolores, traveled much in the Papaguera or Pimeria Alta, as far as the Gila River and crossing the Colorado. He was treated kindly by the Papagos; but they have, nevertheless, been described by the early chroniclers as wild and dangerous. According to Mr. Bandelier, there is no historical record left of their customs and religion beyond that concerning the prevalence of witchcraft, which is still much in evidence."

Then on page 25, he continues (reading):

"As for the Papago the greatest part of the tribe never could be induced to live in pueblos or villages which was always the policy of the Spanish missionary. In spite of the efforts of the Jesuits and Franciscans, the Papagos are still living in their rancherias as of old, half nomadic in habit, resorting in the winter to the Sierras where water is more plentiful and where their cattle, horses, mules, and donkeys find good grazing ground."

"Their presence at Casa Grande does not in my opinion necessarily imply that the ancestors of the present occupants of that region had anything to do with the building of this noble structure. Granted that the methods of its makers were thoroughly aboriginal and even crude, it is a far step from the Pima and Papago dome-
380 shape grass huts, practical as they are in the desert, to the four story, thick walled, building in question. The lack of architectural skill evinced by the Pima and the Papago and their little developed aesthetic sense seem to me utterly at variance with the theory that the tribe or tribes in question built the Casa Grande. Its buildings must be sought among their predecessors in the Papagueria."

W. L. Bowie was called as a witness on behalf of defendant, and after being duly sworn, was examined and testified as follows:

William L. Bowie is my name; I live in Tulsa, Okla., I am an oil operator—I have been engaged as such about 3 years. Before that I was Supervisor. U. S. Indian Bureau. I have been employed by the Government in the U. S. Pension Bureau from 1897 to 1914; from 1914 to 1918, I think, I was detailed as Inspector for the Five Civilized Tribes in the Indian Bureau, Oklahoma, stationed at Muskogee; then I became Supervisor in the Indian Service, with headquarters at Washington, where I was employed until I left the service. In my work I have had opportunity to become familiar with the Oklahoma tribes, the Cherokees, the Chickasaws, the Choctaws, and Seminoles, the Creeks, the Osages, the Miami Wyandottes and many other tribes and did some work among the Sioux, Apaches, Pimas and Papagos and some Indians of Calif. I have made a special study of the situation of the Papago Reservation, with relation to the facts of the present case. I was ordered by the Commissioner of Indian Affairs in March, 1918, to San Francisco, Calif., to join Mr. Truesdell, Special Assistant U. S. Attorney General, to assist him and work under his direction in obtaining the facts connected with the defense of the Government in this suit. I went to Arizona and stayed 4 or 5 months, going into the situation there, and made headquarters at Tucson, and what was then Indian Oasis, which is about the center of the present Papago Reservation. I visited all parts of the Reservation and interviewed dozens, if not hundreds, of persons, Papagos principally, in connection with this matter. I was instructed to first inquire into the circumstances surrounding the execution of ten alleged deeds by
381 certain alleged Papago chiefs, purported to have been made

in Dec., 1880, and conveying to one Robert F. Hunter, as trustee, an undivided one-half interest in various alleged tracts in Southern Ariz. I was instructed to ascertain whether any of those chiefs were yet living, or any other persons connected with the execution of those instruments, or having anything to do with them, and to ascertain what they knew about them; to ascertain all I could relative to these alleged tracts, if they existed in fact, and if so, to make an effort to ascertain the boundaries that could be ascertained; and to go into the customs of the Indians, the government of the Indians, and the history of that country in general. I investigated along these lines, making very extended inquiry among the Papagos to find out their knowledge, if any, of what had happened in 1880. After a conference with the Superintendent of the Papago Reservation, Mr. McCormick, it was decided to call a general conference of the Papago Indians, to be held at Indian Oasis, the headquarters of the Agency. We sent word to as many Indian villages as possible, calling a meeting to be held on April 20, 1918; present at that meeting were Mr. Truesdell, Mr. Crawford, Special Assistant Attorney General of the U. S., Mr. Thackeray, Mr. McCormick and Papago interpreters. I counted the Papagos present—there were 90, most of them were elderly men. They came from almost every Indian village in the Papago country. Mr. McCormick made an address to them, in which I was introduced. Mr. Thackeray also made an address, and then I endeavored to give them to understand as fully as possible, and in detail, the facts that we wanted to ascertain. I told them of the filing of this suit, of the recording of those 10 alleged deeds to Robert F. Hunter, alleged to have been made in 1880 by Jose Maria Ochoa, alleged head chief of the Papagos and various chiefs or captains to an undivided one half interest in between 2,000,000 and 3,000,000 acres of land which were deeded to Robert F. Hunter. We mentioned Ochoa. My recol-
382 lection is that we endeavored to ascertain whether they had ever known of any chiefs; what their authority was at that time in the premises, if they had any, and the extent of it, and whether or not the Papago country had ever been divided into tracts and whether or not it occupied at that time the country as a whole and exactly what their claim was with reference to the territory they occupied, and the authority of the chiefs and of the principal men and the Government in general. Then it was suggested that a committee be appointed to make inquiry among the villages to find out who knew something about these instruments, or deeds or powers of attorney, that were alleged to have been executed in 1880. During the lunch hour the Papagos reported the names of six men who were to make this inquiry and report back to Indian Oasis at a future date. Upon inquiry no Indian present had any knowledge of any *knowledge of any* of these things at all. Knowing the Indian's mind, I explained in as simple language as possible about these deeds and these powers. I had conversed with Mr. Ainsa, the notary, who took the acknowledgments to these instruments, before proceeding to the Papago country, and had his story concerning the circumstances under which these deeds were

executed and I went into detail with respect to that, told the Indians that it was alleged that the deeds were executed at the residence of Bishop Salpointe, the Catholic Bishop at Tucson at that time; that Mr. Hunter from Washington was present; that it had been stated that he was the representative of the Catholic Bureau of Missions; that the various chiefs named in those deeds were assembled there including Jose Maria Ochoa and that they had all signed the deeds. I attempted to explain to them what a deed was and that this deed meant that they were conveying to Robert F. Hunter a one half undivided interest in those various tracts of land. I had to tell them about the acreage involved in those tracts and explained it to them the best I could; having conversed with Mr. *having* 383 *concerned with* Mr. Martin also, and having read his literature on the subject, I explained to them that men were going about the country—I told them in the first place of the contract which I have seen on record in Los Angeles, between Robert F. Hunter and Robert M. Martin, of Los Angeles, under which Mr. Hunter sold a three-fourth interest in any interest that he might have under his alleged power of attorney, and under these deeds, as I understood it. And Mr. Martin had been selling certain so-called units throughout the country, and that the literature which he had been putting out represented that those units stood for 2,000 acres of land which these various persons would finally get and that they had been bringing various purchasers of units through the reservation, and showing them these lands, and that it was my idea that they would be deprived—that the effect of the whole thing was that one-half interest in their lands—in these particular lands would be taken away by these men if this suit was sustained in court.

Whereupon plaintiff moved the court that all matter relative to Mr. Hunter's contract with Mr. Martin with reference to the sale of the units and spoken of in connection with this matter, be stricken from the record as not material—Overruled—Excetion noted.

I told them so much as I thought would explain to them fully the entire matter, and would cause them to exert themselves to make an inquiry that was necessary to bring out the facts in connection with it. In the first place, I asked them if they knew Jose Maria Ochoa, and no one at the meeting had ever heard of any Jose Maria Ochoa. I asked them about various alleged tracts and went as much into detail as I could briefly with respect to these alleged tracts, and no one had ever heard that the country had been divided into any such tracts. Some of them they couldn't identify at all. I spoke of the chiefs—alleged village chiefs, and several of the alleged village chiefs they had never heard of at all. And no one at the meeting 384 professed any knowledge whatever, either by hearsay, or otherwise, concerning this alleged meeting which had taken place at Tucson at the time the alleged deeds were alleged to have been made. And the statement was made that they occupied the land between the Baboquivari range on the east and the Quijotoa range on the west, and the Mexican Border on the south, and the Southern Pacific Railroad on the north. They occupied it as a

whole; their cattle ranged it as a whole; that there were no dividing lines between any of the villages, and never had been. Of the Indians present there were only a few who had heard of it and they had heard of it within recent months since inquiry had been started by the Indian Department. The committee was selected by the Indians themselves. I later went back to Indian Oasis at the appointed time and heard the report of that committee which was entirely negative so far as any information concerning the holding of this meeting at Tucson, or the execution of any of these alleged instruments at that time. Absolutely no information had been obtained from any person; no one apparently had ever heard of the instrument or the meeting. At this Sells meeting no one expressed any knowledge or information upon the subject at all. After this Sells meeting of April 20, I next visited Santa Rosa. I visited San Xavier and made extensive inquiries there among all of the older Indians, directing any inquiry principally to the ascertaining of whether I could obtain any information concerning the execution of these deeds, in Dec. 1880, with entirely negative results. I then met various Indians, who came into Tucson, making inquiry of them. Also concerning the Papago customs and the territory they inhabited, and what their claims were to this territory, and whether there were any particular tracts of land. And I made various trips out over the Papago Reservation, going around the different villages. Then in July I made a tour of the reservation, visiting practically every Indian village of any importance on the Indian Reservation, interviewing all the oldest Indians that I could find. I never found anyone who knew of the present suit except those who had heard about it since the Government agents had gone there inquiring after the institution of the suit; no one professed any knowledge at all of the attorneys who were professing to represent the so-called pueblo of Santa Rosa. During that trip I visited the Santa Rosa villages and other of the Santa Rosa Indians came at that time into the several villages.

By the Court:

Q. What do you mean, let me ask by the Santa Rosa villages?
A. There are a group of villages in the Santa Rosa Valley that seem to be termed the Santa Rosa villages. No one seems to know any difference between them, only they call them the Santa Rosa villages. The Indian names of the villages, included in the designation, "Santa Rosa villages" are Kiachemuck, Achi, Akchin, Makumavais, and Qewa—Anegam is not included.

When I reached Santa Rosa I found that they were having one of their religious ceremonial feasts over at Covered Wells, and there were comparatively few of the older Indians in the villages. I only gathered as many as remained, and there were about 12 who attended the meeting, one Sunday morning in July, and I took practically all day with them there, going into the question of this suit and their knowledge of it, and the effects of it, and taking up the question of this particular tract—this alleged Santa Rosa tract,

and the boundaries of that tract, and whether they had ever claimed any such tract of land, or occupied and used any tract as such.

Mr. Reid: We object to that as hearsay testimony.

Mr. Kleindienst: Now your Honor, if his answer is going to be they never heard of it, he is surely conveying to your Honor something that they were put on the stand and testified to.

The Court: As I understand, this is what he said to them.

Mr. Kleindienst: If he will confine himself to that, and not what they said back to him, we will offer no objection.

Mr. Fraser: Here is an official government investigator sent
386 out and he is now reporting the result of his investigation, the same as he reported to his supervisors.

I talked to them about these alleged monuments, and this alleged Santa Rosa Tract, and talked to them about the customs of the chiefs, and the government, and all those things in detail. The discussion was, in the first place, as to the first starting and beginning point, Kabitque, and the mountain visible just to the east, a very prominent peak. The question was as to the name of that very prominent peak there, and it was brought out that the name in Indian was Kavique.

Q. How do you spell that? A. Kavique, would probably spell it.

Q. How about the other corners of the tract? A. And it was brought out at the meeting that, in sight there was a black group of hills to the southeast, that they called Unukam, which was the nearest to the sound of Omoko that I could get them to designate.

Q. About how far were those hills from where you were? A. They were 14 or 15 miles south of Kavique.

Q. How about the other corners? A. We then discussed the matter of Mescalero and no one had ever heard of Mescalero, and could not identify that at all. The question of Sierra Cabeza meaning in Spanish "head mountain" was discussed, and they pointed out a mountain west and just a little north of Santa Rosa that they called "head mountain" in Papago. I have forgotten now the word they have for that.

Q. Was that the mountain that plaintiff has designated as Table Top? A. No, it was a great distance from Table Top; probably 15 or 20 miles south of Table Top. But in the discussion as to whether any such tract had ever been claimed by the Santa Rosa Indians, they said emphatically, No, that they had never heard of any such tract as being attached to any of the Santa Rosa villages. And in the discussion as to whether they had ever claimed any particular tract of land at any time, they stated emphatically that they had not, and that they had merely occupied and used the country,
387 and raised their cattle there as the other Indian villages have done from the earliest recollection of those persons, and they never heard of any Spanish grant or cession of land by Mexico to them, or any recognition of any title by them.

By Mr. Fraser:

Q. After that meeting what next did you do? A. We continued our tour of the reservation, visiting Cacci, Quajote, Comelic, Quijotoa, Tecolote, and Kakla, which seems to be termed in one of the deeds Tesota, and Quiote, and practically all of the important Indian villages. I pursued my inquiry along the same lines as I had at the meetings spoken of. I found no Indian who had ever heard of the transactions of 1880 or who had authorized, or knew of the authorization of the present suit—I found no one who expressed approval of the present litigation. In the trip I found only one man who could be identified as one of the chiefs who signed their instruments still living, and that was Pablo of Tesota. I remained all day with Pablo, and went very fully into the subject, telling him in detail the circumstances under which those deeds were executed, and inquired whether he had attended such a meeting at Tucson; whether he had any recollection of having signed those instruments as alleged, etc. He was a man I might say 83 years of age—he had never heard of the suit before.

By Mr. Fraser:

Q. Did you find any other people who were supposed to be participants in what happened in 1880 at Tucson? A. No one else was apparently living then.

Q. Where did you next pursue your investigation of this subject? A. After leaving Tucson along in July, I believe, I went into Los Angeles, and pursued some research work in the libraries there. I continued and completed my tour of investigation at that time, leaving Tucson not very much later. Later I had been instructed to proceed to Santa Rosa villages and obtain affidavits from as many residents of the Santa Rosa villages as was possible, as to whether these Santa Rosa Indians had any knowledge of the institution of this suit, or had employed Cates and Robinson, or Rounds, Hatch,

Dillingham & Debevoise for the institution of this suit. And
388 I proceeded to the Santa Rosa village in Jan., 1919, and found only a few people among the villages at that time; probably 20 or 25 adult Indians of any age, and I proceeded to question them concerning the subject of inquiry, and to obtain their signed statements. I was told that the balance of the Indians, the large majority of the population of the Santa Rosa villages were down in the Salt River and Gila River valleys cultivating cotton for the cotton companies down there. I then proceeded down there, and found them, as in the Papago country, living around in the villages, in their sahuaro huts, made from the sahuaro cactus, which grows in that country. And the Kiachemuck Indians had a large village, comparatively speaking, in the suburbs of Florence, and I proceeded there and held a meeting at night out in the village. There were 35, as I remember,—30 or 35 adult male Indians present at that meeting, and through my interpreter I discussed with them fully the matter of this suit; whether they had any knowledge of it;

whether they had authorized the institution of it; whether they had authorized anyone to represent them in this matter at all, all with a negative result.

Q. Did you take up at that meeting any inquiry about the transaction in 1880? A. Yes, sir; I discussed with them there more briefly what I had discussed at the other meetings of those Indians, with the same result.

Q. State whether or not you asked any of the Indians whom you met or talked to at any of these meetings to make inquiries of their own on those subjects. A. Yes; my recollection is that I asked them to do that, and asked them to inquire around. It was rather a stereotyped statement that I made to inquire among the older citizens to see if they could find anyone that knew anything about these matters, and if so, to report to the agent, or one of the interpreters, or myself. The total length of time covered by the investigations that I have described on and in the vicinity of the reservation was 4 months—about 6 or 7 weeks of that time was

389 spent on the large Sells Reservation, the rest of the time was spent at Tucson and San Xavier. As I have already stated,

I visited I think practically every village of any importance on the reservation having to do with any of those incorporated in, or what might be in any of these 10 alleged tracts. And that would include Cacchi to the northwest, and Quajote on the north, down to the Mexican border, which is probably 100 miles south of those villages, and along the Mexican border, and the villages in between. That covered the territory of probably 125 miles long and 100 miles wide. I was on the San Xavier reservation on a great number of occasions. The Pablo with whom I talked was the supposed grantor in the Tesota deed. I talked to a man called Andreas Viscerio in the course of my investigation. I found him at the village of Caccha and he was a brother of Julian, one of the alleged chiefs who is supposed to have signed one of the deeds. He had never heard of the deeds or the power of 1880. At the time I talked about Jose Maria Ochoa at the Sells meeting April 20, I did not know his nickname or other name. Later I found it to be Koon Kan or Con Quien. I interviewed the widow of this Koon Kan and his eldest son, a man 65 years old. Neither he nor his widow, who was an elderly woman, had ever heard of the deeds or the powers of 1880. In the course of my investigation I made a stereotyped inquiry all over the reservation as to whether any council meetings had been held to authorize the transaction of 1880. I did not know of but 10 deeds to this transaction until July, 1918, when I went to Los Angeles and learned of the existence of 6 others and as to these six deeds I took up their existence or authenticity after that with the Santa Rosa Indians, both those I found in the Santa Rosa Valley and those who were away from their homes in the Salt River and Gila River valleys during January and February 1919. The results were the same as I met in my other inquiries concerning the other ten deeds.

"Q. Now going into the question of the Papago system of land

holdings, did you make any inquiry to find their theory of land title holdings?

To which question the plaintiff objected on the ground
390 that the answer would be hearsay and that the witness was not qualified to give an opinion. Objection sustained and exception noted."

I especially noticed the locality called "Santa Rosa". In common parlance the villages I mentioned this morning are referred to as the Santa Rosa Indians and they inhabit a district there which is called the Santa Rosa district. The Indians there appeared to have no common government.

Q. Is there any continuity on the ground between these various villages you named as the Santa Rosa group? A. No; they are distinct villages, I would say.

Q. Please tell a¹ out how far they are apart; those, I mean, that you mentioned this morning. A. Akehin is probably three and a half or four miles south of Kiachemuck; Kiachemuck is north of Akehin. Then going east Achi is probably two miles from Kiachemuck, and the Makumavais is in to the southwest; I did not go in there. I don't know the exact distance. Quiva or Kuewa is probably a mile north-east of Achi. The houses of the villages are scattered in groups rather than being continuous. There are fields and stretches of desert between the houses because the land is not productive or so situated with respect to the overflow of water that it can be cultivated. The principal mountain home of the Kiachemuck Indians is Covered Wells, located in the mountains south and west of there. Some to go Brownell close by; the principal mountain village of Akehin is Comobabi, some to to Cobabi; the principal home of the Achi Indians is Silynarki, or Hanging Saddle, which is the principal mountain village.

Q. Now, have you examined all of these 16 deeds, leaving out of consideration the blanket deed, that are supposed to have been given in Dec., 1880? A. Yes, sir.

Q. And have you examined the description of them, with an attempt to identify the tracts so far as that was possible?

Mr. Reid: If the court please, we are not prepared to try any cases except the one of the Santa Rosa Indians and going into a description of these various tracts in that way we never con-
391 ceived could be relevant to this case, and we submit the record should not be encumbered with it.

Mr. Fraser: The purpose of this, your Honor, is this: Supposing it to be possible with any sort of accuracy to identify the Santa Rosa tract I wish to show by this witness that several of the other deeds given at the same time that the Santa Rosa deeds were given, conflict and cut in to the Santa Rosa tract, although the Indians who were supposed to have given these deeds were Indians of the mountain villages belonging to the valley villages, composing the Santa Rosa group. That is the purpose of this testimony. It goes to the certainty of the Santa Rosa Tract.

The Court: I think he may answer the question.

Mr. Reid: And may we have an exception?

The Court: Yes.

A. The Kiachemuck tract would either be entirely included within the Santa Rosa tract, or within a large part overlapping it. The Anegam tract would also in a large measure overlap the Santa Rosa tract, or to a large extent. Yes; the Kiachemuck deed, spelled here K-a-k-a-e-h-e-m-o-u-k, and the Anaca deed, and the Poso Salado deed are included in one deed.

Q. The spelling is not quite the same? A. No, sir; except it sounds the same.

Mr. Kleindienst: Now, we move that that be stricken as the conclusion of the witness, your Honor, unless he qualifies as an expert in that language. He says that the spelling of these sounds the same. We move that that be stricken.

By the Court:

Q. Are you acquainted at all with the language, Mr. Bowie? A. Not the Papago, no sir.

Q. What do you mean by that statement, that it sounds alike?

A. The sound as I heard the Papagos call the name in the Indian, and what this would be like in English.

The Court: I think he is competent as to what it sounds like. He heard it.

Q. Can you state in a general way to what extent these two deeds that you have mentioned conflict with the Santa Rosa tract, supposing any positive identification of any of the tracts has been made?

A. Well, as I recall in the other deeds, it is, of course, problematical as to what some of those things mean. For instance, in the

392 Kiachemuck deed, what they refer to as the Santa Rosa Mountains, the tract runs along the crest of the Santa Rosa Mountains, which is described in the deed as being north of a particular village. The mountains north of Kiachemuck are not called the Santa Rosa Mountains, the Santa Rosa Mountains being located east of Kiachemuck. So it would depend upon the location of that particular mountain described in the deed as "Santa Rosa Mountain" as to whether it would be partly included in the Santa Rosa tract or bodily altogether included. If you consider these mountains in the north it would be altogether included in the Santa Rosa tract. If you say that this mountain is identical with what the Indians now call the Santa Rosa Mountains, which is on the east, it would be partly included in the Santa Rosa tract.

Q. How about the Anegam tract? A. A large portion on the west and southern end of the Anegam tract would be included in the Santa Rosa tract; probably half would be included in the Santa Rosa tract provided you fix the northern corner of the Santa Rosa tract at Table Mountain, which I believe is problematical.

Q. There is a separate deed of Cobabi, is there not? A. Yes, sir.

Q. Is that one of the mountain villages that you have mentioned?
A. It is a mountain village.

Q. Belonging to which valley village? A. The Indians from the valley village of Big Field on the south, principally make their home at Cobabi.

Q. I thought you testified that was some of the Santa Rosa Indians? A. Some of the Santa Rosa Indians from Akchin live there in the winter months.

When I was down on the reservation I took quite a large number of photographs.

Whereupon defendants introduced a photograph which was received in evidence marked as Defendants' Exhibit 31. Said photograph shows it to be a small Indian house, taken at Akchin, showing two or three small Indian houses in the background.

Whereupon defendants identified a photograph taken at Akchin and same was introduced and received in evidence as Defendants' Exhibit 32. This exhibit shows the ancient dome shaped houses; the one in the middle, the adobe brick house, and the
393 one on the left the mud plastered stick house. I took this photograph because they are representative types.

Whereupon defendants introduced a photograph as Defendants' Exhibit 33—the house in exhibit 33 is a typical Sahuaro or jointed cactus rib constructed house, taken at Akchin—it is a dwelling house.

Whereupon defendants introduced Exhibit 34, which was taken at Akchin.

Whereupon defendants introduced Exhibit 35. Witness testified that this exhibit shows a dwelling house, the cooking being done at the left hand end behind a whole straw side and adobe plastered house.

Whereupon defendants introduced Exhibit 36—this photograph was taken at Akchin.

Whereupon defendants introduced Exhibit 37—this is a primitive dome shaped style of house, taken at Akchin.

Whereupon defendants introduced a photograph as defendants' Exhibit 38—witness testified this was a house taken at Akchin on the edge of one of their fields.

Whereupon defendants introduced a photograph as Defendants' Exhibit 39—witness testified this is in the western end of the Kiachemuck village, around their charco, or water hole, the dimensions of which are a few hundred feet—probably one-third of the village is shown in this picture.

Whereupon defendants introduced a photograph marked as Defendants' Exhibit 40—This represents a cultivated field of one of the Kiachemuck Indians, located at the east end of the charco. Whereupon defendants introduced a photograph marked Defendants' Exhibit 41—witness testified the exhibit was taken at Achi and is the home of Juan Pablo. It is typical of a home, with the exception of the adobe house there; that is about the only house of that character that I located in any of those Santa Rosa villages. Whereupon defendants introduced a photograph marked Defendants' Exhibit 42—witness testified the same was taken at Achi and

is an adobe house. There are a number of these houses there at that village.

Whereupon defendants introduced a photograph as Defendants' Exhibit 43—witness testified it as taken at Achi, was an ancient dome shaped house and is one of the various types of houses I have shown.

394 Whereupon defendants introduced a photograph as Defendants' Exhibit 44—witness testified that it represents a part of Anegam village, with mountains in the background that the Indians call Santa Rosa Mountain, the high peak being Quijotoa peak. The range is six or eight miles long I believe.

Whereupon defendants introduced a photograph in evidence marked Defendants' Exhibit 45—witness testified that it is an extension of the photograph just shown, a part of Anegam village—that there are no native structures in the neighboring villages more elaborate or dignified in their style of architecture than those shown in these photographs. There are more adobe brick houses in the mountain villages on account of the fact that they live up there in the winter time and they are warmer. None of the adobe brick houses are any more dignified than the house of Pablo about which I have testified. The houses shown in the photographs introduced are typical of the valley houses of the Santa Rosa group the only difference being that there are more adobes in the mountain, I think.

In the corner of my investigation I interviewed Robert M. Martin on two occasions about the present suit.

Q. Did you inquire who it was that employed the attorneys representing the so-called plaintiff? A. Yes, that came out during the course of our conversation.

Q. Who did he say employed them?

To which question the plaintiff objected on the ground that it was irrelevant and immaterial. Objection overruled; exception noted.

A. He said that he (Martin) had employed at first an attorney in Seattle, whose name I have forgotten, to give him a report before he purchased the three-fourths interest from Hunter; that following that, he had employed Cates and Robinson of Los Angeles, that firm having been almost exclusively on the case for a year, I believe, he told me, for investigation work, and that he had employed the firm of Rounds, Hatch, Dillingham & Debevoise to represent him in the courts of the District of Columbia and the U. S. Supreme Court, on a retainer; that he, himself, had paid a retainer.

395 Whereupon the plaintiff moved that the last answer be stricken as hearsay. Motion overruled; exception noted.

Cross-examination by Mr. Reid:

I don't remember where plaintiff's Exhibit 27 was taken—I don't remember ever to have seen that house before or the picture of it. I don't remember a store at Santa Rosa. I have been to the school house at Kiacheemuck. At this meeting at Tucson I had interpreted to the Indians and told them my conclusions from the facts as they

were represented to me, which was that these deeds were deeding half of their lands away and that men were already in the field who had bought or were about to buy 2,000 acres each in the Indian country. I called their attention to the reservation, that it might be broken up; I told them what a good thing the reservation was for them.

"Q. Did you call their attention to the fact that this suit was to prevent the Government throwing those lands open to various settlements and letting anyone come in that wanted to? A. No, sir. I did not believe that was the fact.

Q. You didn't tell them that the reservation might be taken away from them at any time and that these lands could be thrown open and that the reservation didn't mean any ownership in lands? A. No, sir.

"Q. You simply told them that this was a suit to take away half of their lands, to be explicit, did you not Mr. Bowie? A. That was one thing I told them * * * I wanted to impress them with that fact.

Q. And you also impressed them with the fact that if they knew anything which might confirm these deeds that they would lose these lands, did you not? A. No, that was not my intention.

Q. It may not have been your intention, but was not your attitude and conversation along those lines? A. I was dealing with very honest and primitive Indians who would not be so impressed; one of the most honest of the Indian tribes of any in the entire country."

396 While I was talking, the interpreter did not indicate that the Indians did not understand. Both interpreters were intelligent men.

"Q. And they did not say to you, or make any intimation that these men could not understand fully what was intended by your explanation of a deed? A. No, sir."

This was also true of the power of attorney. I left no instructions with the superintendent of the Indian police to tell Indians not to talk with white men about this case but I left instructions not to sign anything without conference with the superintendent. It was in July, after the April meeting at Sells, that I visited Santa Rosa where there were only 12 of the older men. I think this suit was instituted in 1914, later dismissed and instituted again.

"Q. Well, is it not a fact that some of these Santa Rosa Indians, some of those older Indians that you found did know at or about the time that the suit was instituted—that there was such a suit? A. Mr. Thackeray went to Santa Rosa immediately after the first suit, on telegraphic instructions from the Indian Bureau and he made inquiry there, and the first intimation the Indian Department had of the institution of this suit—

Q. He had a meeting with 35 Indians? A. I couldn't state as to that.

Q. You have read his testimony, have you not, in this case? A. I believe I did.

Q. You have read all of the testimony practically? A. Yes, sir."

My efforts were not directed to ascertaining how many had learned about this suit after it was instituted, and therefore I did not impress my mind with that, and made no effort to ascertain that.

My object was to ascertain who knew about this suit before
397 the government agency started the inquiry.

Q. Did you last night go over any of the testimony in the case? A. Not last night; no, sir.

Q. When did you, the last time? A. When I first came here.

Q. Then all your testimony in which you have testified over and over again—and I appeal to the record in case it is challenged that of these people, scarcely any of them had heard of the suit, or the Hunter transaction until you arrived there in April, 1918, you desire to explain that you meant by that that they had not heard anything of the suit prior to its institution? A. Prior to the time the government agents began the inquiry and explained to them that this suit had been instituted.

Q. Now, even at the Sells meeting isn't it a fact that only a very few had ever heard of the suit—had ever claimed to have heard of it, even from the government agents? A. At the Sells meeting I only knew what was interpreted back to me by the interpreters from the occasional person who would speak up. We would ask if they knew certain things, and if anyone knew of those things, they were supposed to speak, and in certain instances, did speak. If none did speak, we took it as a negative.

Q. In your testimony, I think you said two or three times, but I don't remember just the number, no one had heard of this suit?

A. We made inquiry if anyone had ever heard of this, that and the other thing, and if no one spoke we took it as a negative response.

Q. You do know, as a matter of fact, that Mr. Thackeray went pretty well over the Papago country in 1914, immediately after he heard of this suit? A. My understanding is that he confined his inquiries to the Santa Rosa Indians.

Q. And did you, or not, know that a man by the name of Santee repeatedly went over the Papago country into all of these villages telling them about the suit? * * * A. I remember that man, but what efforts he made I don't remember that. I talked with him myself. I remember that. He is quite an intelligent Papago.

By Mr. Reid:

Q. That you are pretty well informed of the fact that or about the time that this suit was instituted, or very shortly thereafter, that many, or at least several people made investigations and talked to the Indians about it? A. Yes, sir.

Q. And especially was that true at Santa Rosa, where Mr. Thackeray went and called a meeting? A. Yes, sir.

Q. And told them that this suit was instituted in their behalf? A. Yes, sir.

Q. You never have heard, have you, that after 1914, that the Indians, for some years repudiated anything about this suit, did you?

The Court: Did what, Captain?

Mr. Reid: Repudiated the suit or made any effort to have it stopped, until you went in there?

The Witness: No, they are not the kind of Indians to take initiative action.

Q. Then these Indians are of that character, that they do not rush around and give information freely——

The Witness: Yes; they are.

Q. And are they not of that character that when a matter affects them and their titles adversely, they close up like a clam, and do not talk at all? A. I would answer that by saying that that is the Indian disposition in general everywhere and the more primitive the Indian the greater that disposition. * * *

Q. If they thought that their knowledge of this transaction would in any way make their enemies strike against them as they had it pictured to them, do you think they would say anything about it?

A. These Indians are without design. They would tell you openly and frankly, without regard to the consequence the truth as they saw it.

Q. You were there 6 weeks, and you are expert enough in ethnology so that you can analyze their minds? A. I have worked for ten years among the Indians.

Q. But not 10 years among these Indians? A. The whole race, their minds work along the same lines. That has been my experience.

Q. At any of your places at meeting, or at any time you were there, did you find any Indian that had known of this Hunter transaction, having heard of it prior to the institution of the suit? A. Absolutely no.

Q. None of them? A. None of them; no one.

Q. Jose X. Pablo was your interpreter and was with you constantly, was he not? A. Yes; during my tours on the reservation, and on the reservation proper.

Q. He is the most intelligent Indian in the whole country
399 down there, is he not? A. I would say yes.

Q. And he knew that you were trying to find someone who had known of this transaction prior to 1914, did he not? A. Yes, sir.

Q. And don't you know that he knew of it and testified that he heard of it in 1910? A. I don't think Jose X. Pablo testified to that. Hugh Norris knew of it in 1910, when Brown was in there.

Q. You have read this testimony of Jose X. Pablo, have you not? A. I think so.

Q. Do you remember of reading this (reading).

"Q. Now, coming to this suit of the Pueblo of Santa Rosa against the Secretary of the Interior, when was it you first heard of this suit, Mr. Pablo? A. When some of the Government officials told us about it.

Q. Can you tell about what years that was? A. I think it was along about 1910." * * *

Q. Hugh Norris was with Brown in the Indian country was he not? A. So he told me—well, I don't know about being in the Indian country. He interviewed Brown, as I understand, at Tucson. Brown went to the Indian country by himself.

Q. That was in 1910, was it not? A. I think so.

Q. And Hugh Norris went around to the various villages and told them that he wanted them to sign a power of authority, to bring suit, did he not? A. No; he told me he was instructed by the Indian Agent to tell them not to do that.

Q. Didn't he do it? A. I don't know.

Q. Hugh Norris was present at the Sells Meeting as one of the interpreters? A. Yes, sir.

Q. He never disclosed that he had heard anything of this? A. The suit was not instituted until 1914. I was talking about the suit.

Q. Well, about the Hunter transaction? A. I don't think that Hugh Norris even understood anything about these Hunter deeds in 1880, even from what Brown told him.

Q. But he had talked to Brown, and went out there and tried to get the Indians to enter into a new contract, did he not, and was not successful? A. He told me that the agent told him—that the agent had instructed him not to have anything to do with it, and his object was to lead Brown out, and get all the information he could about Brown's object. * * *

400 Q. Hugh Norris and the agent, at least, knew something about the Hunter transaction in 1910? A. Vaguely something about it.

Q. And Mr. Norris never disclosed that he knew anything about it in April when you were there? A. Oh; yes, he told me that he knew about it, which was a very vague sort of thing.

Q. Then you want to correct your testimony that not a single Indian had heard anything about the Hunter transaction, or knew about it prior to the institution of the suit? A. Well, Hugh Norris, if he heard of the transaction—that is of this transaction, in so far as Hugh Norris was concerned—

Q. And Jose Pablo, if he had heard of any such transaction in 1910, he never disclosed anything to you about it? A. No, sir, not that I can recall.

Q. Were you in the employ of the Government when you received this commission to go down into the Papago country? A. Yes, sir.

Q. You had been in its employ up to that time for some time? A. Yes; I had been some years in the Indian Department at that time.

Q. And your chief employment was with the Oklahoma and northern Indians? A. Yes; prior to that time, yes, sir.

Q. You had not been in Arizona or New Mexico? A. No, sir.

Redirect examination by Mr. Fraser:

"Q. Did you at Los Angeles talk to Mr. Martin, or to anyone about this man J. S. Brown?

To which question plaintiff objected ground immaterial; objection sustained; exception noted.

"Q. In the conversation with Mr. Martin that you testified to yesterday, did he inform you what he had done, or what course he had taken with regard to the interest he had acquired from Hunter and the Hunter Deeds?

To which question plaintiff objected on the ground irrelevant, immaterial, and hearsay; objection overruled; exception noted.

A. Yes, he did.

Q. What did he tell you?

401 To which question plaintiff objected on the grounds that it did not tend to prove any of the issues in the case and is entirely and purely hearsay; objection overruled.

A. He told me that he considered that he owned a three-fourths interest in the undivided one-half interest which he purchased from Mr. Hunter in those 10 tracts; that it was an individual ownership. That he had formed a syndicate, taking 1,000 units as a basis; had given 500 units so to speak, to the Papagos. Comparatively few of the older Papagos speak English. A larger percentage of the younger Indians speak English.

The older ones are confined to a few dozen words. I don't believe I found one old Indian who could speak English at all. Probably Hugh Norris, an Indian, who attended the Presbyterian school was the oldest who could speak English.

Examination by the Court:

Indian Oasis or Sells is 25 miles directly south of the Santa Rosa group. At Santa Rosa the Government School House is at Kiacheemuck. The reason Indian Oasis or Sells was selected as the place of the meeting was because it was considered the headquarters of the Indian officials there. There were one or two buildings there and some in the course of construction to be occupied as headquarters for the Papago Indian Agency. They had a physician there, a school teacher, and a farmer and stockman. Hugh Norris is about 50, I think. He spoke English fluently. Jose Pablo was one of our interpreters and also spoke English fluently.

Q. One or two of Captain Reid's questions to you on cross examination took the form, as I remember—and it may well be justified by some earlier testimony of yours on the stand here—but one or two of his questions went upon the theory that you were engaged in
402 this investigation, and others also associated in the same inquiry, had, in opening up the subject to the Indians told them that this suit that we are now trying, was designated to take their lands away from them. Was that statement made, is that correct? A. We endeavored to explain as best we could the facts, and after we had stated everything in connection with the

deeds and this unit and all, we did tell them that our conclusion was that that would be the effect.

Q. Well, then, as I understand you, you tied to this suit, so to speak,—the Hunter deeds, and the power of attorney and the contract of sale made by Hunter to Martin, and taking them altogether, you formed the belief that it was the opinion of the Government that the object of it was to get a certain proportion of the lands away from them; is that it? A. Yes; I believe that that was about the statement made.

Q. And can you tell me, Mr. Bowie, approximately, what is the *era* that may be said to be covered by the group of villages which you have stated, as I understand, that were known as the Santa Rosa Villages? A. Probably 4 or 5 miles.

Q. Square miles? A. Well, as a square, probably 5 miles each way. That would embrace all their fields. The present name of Indian Oasis is *Sells*.

E. I. Baldwin was called as a witness on behalf of defendants and after being duly sworn was examined and testified as follows:

Direction examination by Mr. Fraser:

E. I. Baldwin is my name. I reside at 347 Tennessee Avenue, Washington. I am Chief Clerk of the Homestead Division of the General Land Office, Department of the Interior, and have been such for about one year. I have been connected with the office since 1904. I am familiar with the various forms used by the office in the disposal of public lands.

Whereupon defendants introduced in evidence Exhibits Nos. 46, 47, 48, 49, 50, which exhibits collectively are forms of the General Land Office in use at present under the Homestead, Enlarged Homestead and Desert Land Entry Acts and introduced for the purpose designated by counsel for defendants, viz: That in each of these forms the applicant is obliged to swear "That the land is not occupied and improved by any Indian."

The Court: I am not sure what issue this is directed to.

To the introduction of which the plaintiff objects on the ground that they are immaterial and their introduction will encumber the record for so little evidence. Objection overruled; exception noted.

"— For the purpose of reference, Mr. Baldwin will you kindly refer to the dates and volumes and page of the Land Office decisions, in which the circular I have just mentioned is found? A. It is found in 6 L. D. 641. And there is no reference made here to 3 L. D. page 371.

Q. And what is the date of the second one that you have just mentioned? A. That is a circular issued by the then Commissioner, under date of May 31, 1884, approved by the Secretary of the Interior on the same date.

Q. And what is the date of the circular that you are now looking at,—the reissue of the former circular? A. Oct. 27, 1887.

Cross-examination by Mr. Reid:

Q. You will notice that the phrase that is referred to is "That the land is not occupied and improved by any Indian." Do you know whether you interpret that to mean that it must be improved land which an Indian actually has improved and occupied? A. It
404 has been interpreted to mean if they put improvements of any value on it.

Q. Then if the Indians merely claim grazing lands by occupancy, and have never improved the land, either by a fence, or ditch, or touching it, even, this phrase here would not apply to that? A. Well, I believe that would be called occupancy.

Q. That is, it would not be called improved, would it? A. Well, possibly not.

Q. And the word "and" is used instead of the word "or," "and" is used in all the blanks, I believe? A. Yes, sir.

Mr. Reid: We renew our objection, and ask that the testimony be stricken.

Redirect examination by Mr. Fraser:

Q. What is the construction actually put on that phrase by the General Land Office?

Mr. Reid: We object to that. That is for the Court to put the construction on it, and not the witness.

Mr. Fraser: But you have just asked for the construction. I am asking what the Land Office actually does, supposing the Indian is shown to have occupied the land, and not actually improved it.
* * *

A. I think the interpretation of it is any improvement, however slight, or however little value as an improvement.

Q. I ask your attention to the language of this circular of Oct. 26, 1887, as follows:

"You, (that is the registers and receivers and surveyors-general) are enjoined and commanded to strictly obey and follow the instructions of the above circular, and to permit no entries upon the lands in the possession and occupation and use of Indian inhabitants, or covered by their homes and improvements, and you will exercise every care and precaution to prevent the inadvertent allowance of any such entries."

Q. Does that express the present usage of the Department in that regard? A. Yes, sir.

Recross-examination by Mr. Reid:

Q. When you have designated a country as open to Homestead entry, and your office has notified the register and receiver in charge of that particular country and the lands are subject to entry, who has charge of that part of the departmental work that determines whether the land is actually occupied and improved by the Indian or not? A. Why, the application is filed in what we call the local office, on one of these blanks which is subscribed and sworn to before the proper office. Primarily it is their business to see that paper is complete. They transmit it with their monthly returns to the General Land Office here, and they have clerks who are designated to review these and see that there is nothing missing or lacking.

Q. Well, is there anyone who goes upon the land for the department to determine whether this affidavit is true or false relative to the land being occupied by Indians? A. There is if that question is raised, we have a field service, and have special agents and when that question is raised they go and make an actual field investigation.

Q. And if no one raised the question, this is presumed to be all true, and the entry is allowed? A. Yes, sir. If some one brings a private contest after the allowance of an entry, he may contest it.

Q. You do not, from your office, or from the register's or receiver's office attempt to designate in advance what is Indian land, and improved Indian land or otherwise, except as to the reservations themselves? A. No.

Q. And the lands even though occupied by Indians and improved by them, outside of the reservations and confirmed land grants, are subject to entry, with this provision, however, that the entryman must make affidavit that the Indians do not occupy them or have an improvement there? A. Well, I suppose you might say, generally speaking, that is true; but there are so many other sources of land, other than you mentioned, subject to entry, and various kinds of withdrawals and so on.

Examination by the Court:

Q. Have there been any, to your knowledge where patents have been issued to specific parcels of land, in a country over which the Indians graze their cattle and do roam, assuming now that there is no other exceptions or objection, to the land being entered.

406 A. Well I am not competent to assume that. There has none come under my observation.

Q. Now I notice in this paragraph to which Mr. Fraser called your attention there is a slight but nevertheless possible significant change in the phraseology from the form itself. The form itself ends up in the conjunctive, "occupation and improvement;" you remember that, do you not? A. Yes, sir.

Q. That connects by language in the conjunctive? A. Yes, sir.

Q. The language here seems to be in the opposite form, disjunctive, "possession, occupation or use of, or covered by their homes, or im-

provements." What has been the settled policy or construction that has been put on that? A. Well, I believe the policy has been any occupation or any use. This phrase did not appear in these forms at this time—at the time of these first circulars.

Q. The first circulars then were in this disjunctive, were they, "occupation or possession"? A. Well, these are the first circulars, yes. Not the first one. But the actual instruction was not embodied in the application blanks. The first knowledge I had of it was in 1907, and that was put in a form approved Nov. 12, 1907.

Q. You mean in the form in which it now appears? A. Yes, sir.

Q. Well, is that instruction still in force, does it still govern, in the light of the changed phraseology of these latter instructions? I think—my opinion is——

Q. What I am trying to get at is whether that ruling or instruction to which attention has been called still obtains, in the light of the changed phraseology in the later forms? A. All I can say is that it is my opinion that it does.

Q. Does what? A. That it still obtains; that is, occupied or improved.

407 Q. You cannot tell me of a specific case? A. No.

Q. You have no present recollection or knowledge of any case of that kind? A. No, sir.

Q. It is only a matter then of opinion? A. Yes, sir.

Cross-examination by Mr. Reid:

I should say that almost any kind of use of the land would be occupation such as would put the applicant on guard against making this affidavit. If an Indian who simply grazed the land protested to the Defendant against an entry of his range, I don't believe we would require proof from him that he had actually grazed it; we would require proof from the claimant or entry-man that at the time of the application there was no Indian claiming or occupying the land. If a dispute arose between an Indian and claimant, I believe the matter would be actually investigated by the field service or by the division of the Land Office, which handles all Indian questions. The regulations require the claimant to make this affidavit. If he fails to do so, we peremptorily reject his application.

Whereupon **Senor Toribio Esquivel Obregon** took the stand and answered questions under the same condition and for the same purpose that the statement of Senor Garza-Aldape was received. His qualifications were that he had practiced law in the Republic of Mexico 25 years; that he had held various offices in the Republic of Mexico; he is now a teacher in Columbia University, and in the New York University of Latin-American law.

Whereupon plaintiff in rebuttal read into the record extracts from a letter, a part of which was read into the record by the de-
408 fendants, which letter is dated at Agency Papago Indians, Tucson, Ariz., July 21, 1874, from R. A. Wilbur, U. S. Indian Agent, reading as follows:

"I have the honor to submit the following, to-wit: Capt. Ascension Rios, acting interpreter called upon me last week."

That is all I wanted to show, that Capt. Ascension Rios was acting interpreter. Then I have another letter from John Wasson, U. S. Surveyor General at Tucson, Ariz., to the U. S. Indian Agent at Pima Agency, Arizona, dated May 26, 1881. He relates that delegation of Papagos called upon him, and then continues to say (reading):

"They were accompanied by Mrs. Teodora Varela de (Troiel) Trail, a daughter of a Papago chief. This woman is intelligent, well versed in Papago history and seems to possess the entire confidence of the aforementioned chiefs and assistants. Together and through the translator and interpreter of this office, they made the following representations to me, and they believing I possess the power, insisted that I should take action thereon."

"I have another document, which purports to be a certificate of J. H. Stout, U. S. Indian Agent, to the pay-roll of the Pima Agency, dated Oct. 12, 1878, which certificate shows that Ascension was interpreter for the Papagos at that date. I have a document headed "Department of the Interior, Office of Indian Affairs, Washington, Jan. 13, 1885," which reads as follows (reading):

"Col. Hunter.

DEAR SIR:

The powers of attorney empowering you to act for the Papago Indians of Arizona are executed in accordance with custom and usage and are authority for you to represent the interest therein designated.

E. L. STEVENS.

Chief Clerk.

Mr. Fraser: I object to that, as incompetent, irrelevant and immaterial, in that it relates to things after the transactions named, and does not identify the power of attorney in question, and at best only amounts to saying that they are in due legal form.

The Court: I will let it in, as a part of the correspondence.

Mr. Fraser: I ask to have an exception to your Honor's ruling.

The Court: Yes; the exception may be noted.

"Next we will offer a document headed, "Department of the Interior, General Land Office, Washington, D. C., Feb. 17, 1881," which reads as follows:

"Register and Receiver,
Florence, Arizona.

GENTLEMEN:

* * * As a matter of fact Congress has never confirmed any claim that has been presented to the Surveyor General under the

law and instructions referred to unless a grant from the former Government was established, except in the case of a city or town found to be in existence when the United States took possession of the territory, when a grant was presumed.

Very respectfully,
(Signed)

J. A. WILLIAMSON,
Commissioner.

"And next, your Honor, I wish to introduce extracts from a letter by A. B. Ludlam, Agent at Pima Agency, to the Commissioner of Indian Affairs at Washington, D. C., dated Dec. 3, 1880. This letter seems to be a report concerning the Papagos, and says (reading):

"Ascension the former interpreter, has made application to be reinstated and also that he may have pay from the 1st of July, 1880."

"I next wish to offer extracts from a letter written by the Department of the Interior, General Land Office, signed by D. K. Parrott, Acting Assistant Commissioner of the General Land Office, as follows (reading):

"I find that as far back as Feb. 19, 1903, Robert F. Hunter filed in the Department a communication stating that title to all that portion of Arizona bounded on the north by the Gila River, on the east by the Santa Cruz River, on the south by the boundary line between the U. S. and Mexico, and on the west by the Colorado River belonged to and was vested in the Papago Indians."

Testimony of James Ainsa on Behalf of Defendant.

Pursuant to written stipulation made and entered into by the plaintiff and defendant, through their respective attorneys, the deposition of James Ainsa was taken January 14, 1920, in the City and County of San Francisco, State of California, before J. D. Brown, a qualified Notary Public, and after being duly sworn the witness testified as follows:

410 Direct examination by Mr. Fraser:

My name is James Ainsa. At Tucson I used to sign my name Santiago Ainsa; was born in 1840. I reside at 3937 Scott Street, San Francisco. I am an attorney. In 1880 I resided in Tucson, Arizona, and was known there as Santiago Ainsa—then I was an attorney and notary public. I recall in December, 1880, the taking of a series of acknowledgments of Papago Indians to deeds purporting to convey an interest in lands located in Pima County, Arizona, to Robert F. Hunter, Trustee. I was called in by Bishop Salpointe and he introduced me to Mr. Hunter, saying that he came from the Catholic Missionary Society, or something like that, in Washington, for the purpose of arranging something with the Indians to protect their interest in the lands they had and they wanted me as a notary public to certify to the deeds or instruments that were

to be made. Mr. Hunter then told me about the same thing and said as it was for the benefit of the Indians and for the church in part, asked me to act and not to charge for the value of the notarial certificates, which I agreed to do. Then there was a room full of Indians. Mr. Hunter was at this interview between me and the Bishop. The Bishop came in and he explained to them, then he retired. I never saw the Bishop after that in the entire transaction.

"Q. At this first interview were there present just you, the Bishop and Mr. Hunter, or were the Indians also present? A. Well, a number of them because there were two rooms and in one room was a lot of them and in the next room there was another lot of them.

Q. Where did all this happen? A. At the residence of the Bishop."

This took place in Tucson. Then there came in a woman by the name of Teodora Tyrol—I forget the name—she was married to a German—she was a Mexican woman, but a Papago and she acted as interpreter. Then Mr. Hunter presented me a deed and
411 some of the Papagos talked with the woman—what they said I don't know—I don't know Papago but she spoke Spanish and translated Spanish and the Papago then said he agreed to sign and he made his cross and I signed, I certified to it and then there was witnesses, one was Mr. Tully, another was Mr. Cronley—I am not certain about the names but I think Cronley or something like that—another witness was Mr. Beaird, an undertaker, who lived next to the Bishop, and so with each one of the deeds sometimes some of these men acted as witnesses, sometimes others—I cannot remember which it was in any particular cases—I remember twice going to the Bishop's to sign deeds different days but it seems some others were executed at San Xavier del Bac. I have no recollection of that but it must have been so if the deeds—if I saw the deeds I could tell you but not from memory. It is 40 years ago and hard to remember. The Bishop was not present when I took these acknowledgments. I am a Catholic. The Indians looked upon the Bishop as a friend and protector. All the Indians were more or less Catholics and they were influenced a good deal, by the Priests and the Bishop who was the head of all the Catholics. Because the Bishop had introduced me to this man Hunter and explained to me as a Catholic, I had absolute faith of the fairness of the man. I was influenced as much as the Papagos in this case. Mr. Hunter was present in the room when I was taking the acknowledgments. After this thing Mr. Hunter had nothing more to do with it—it was the interpreter that interpreted it into some other language. Mr. Hunter did not ask the interpreter to interpret anything to the Indians in my presence. It was all understood I suppose. It was passed to me and it did not take me very long because there was no controversy. I could not tell what they were saying, you know, but the woman pretended to interpret. I took it for granted that she interpreted it. The Indians came in there and says, "yes"; si. si. They spoke a few Spanish words and they made their cross. I don't remember that Mr. Hunter asked the interpreter to interpret

412 anything as to what the deeds were about. The deeds and everything were drawn up. I saw each Indian make his mark. I think I signed the Indian's name—the deeds will tell you. The Indians told me which name to sign in each case, that is to say, the Indian gave me the name because you must understand that those Indians have two names—one name they use when they speak to civilized people and another name to their own countrymen. I suppose some of them gave me their true or tribal name, others their Spanish name.

"Q. Now I hand you for your inspection an instrument purporting to have been executed by Luis, Captain of the village or Pueblo of Santa Rosa and purporting to convey to Robert F. Hunter, Trustee, an undivided half interest of the lands, grants and privileges owned by said village of Santa Rosa, followed by a description of those lands and grants purporting to be signed by Luis by his mark and witnessed by P. R. Tully and S. Ainsa and acknowledged by Santiago Ainsa. This instrument also appears to have been recorded on June 2, 1914, in Book of Deeds No. 56, page 488 in the Office of the Recorder of Pima County, Arizona. Now after examining that deed, Mr. Ainsa, can you state whether you are the Santiago Ainsa who took the acknowledgment as notary public? A. Yes, and I am also the Santiago Ainsa who signed the instrument as a witness."

Whereupon said deed was introduced in evidence as Defendants' Exhibit 1, reading as follows, to wit:

This instrument, made by and between Luis, Captain of the village of pueblo of Santa Rosa, in the territory of Arizona, for himself and the inhabitants of said village and the villages of

413 Aitij, Semilla-quemada and Chaquima, of the first part and Robert F. Hunter, Trustee, of Washington, District of Columbia, of the second part.

Witnesseth: That for and in consideration of the sum of one dollar, lawful money of the United States, to said party of the first part by said party of the second part in hand paid, and certain other valuable and sufficient considerations from said party of the second part to said party of the first part, moving, said party of the first part, the true and lawful owners of certain grants and tracts of land situate in the Territory of Arizona and described as follows, to-wit: Being the lands, grants and privileges owned by said village of Santa Rosa and more specifically determined by the location of said village—commencing at a point known as Kabitque. (Papago language) Mountain Logia Plain—thence running south to Omoka, a distance of twenty-four (24) miles—thence from Okoma running west to Mescalero, a distance of twenty-four (24) miles—thence from Mescalero, running north to Sierra Cabeza a distance of thirty (30) miles—thence east to the point of beginning, Kabitque, a distance of thirty (30) miles—and containing Seven Hundred and Twenty (720) square miles, more or less—and being the lands owned by said village at the date of the cession of the Territory of Arizona to the United States. Do hereby quit-claim and release, grant, bar-

gain and sell and convey to the said party of the second part, his heirs and assigns, the undivided one-half of all said grants and tracts of land, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, privileges, easements, licenses and prescriptions thereof, and all the estate, right, title and interest, claim and demand whatsoever of said parties of the first part, either in law or equity, in and to said premises. The fields under cultivation at the date hereof being excepted.

414 To have and to hold the same unto the said party of the second part, in trust, his heirs and assigns, forever; and to give legal force and effect to an argument in writing made and entered into by and between said ——— and ——— at ——— on the — day of ———, A. D. 188—.

And the said Luis, party of the first part, for himself and said inhabitants does hereby covenant and agree with said party of the second part, his heirs and assigns, that at the time of the execution of this instrument they are well seized of the above described premises, as of absolute and indefeasible title and estate in fee simple, and have good right and ample and lawful authority to convey the same in manner and form aforesaid; and that the same are free and clear from, all and singular, any incumbrance or lien, whatsoever, by reason of any former or other conveyance, alienation or disposition whatsoever; and that on demand of said party of the second part, said parties of the first part will make, all and singular, such other conveyances, deeds and instruments in writing, with respect to the said grants and tracts of land hereby conveyed, as may be required by said party of the second part to separate and distinguish the same from all other land to whomsoever belonging; and to complete and perfect the title of the said party of the second part to the same.

In witness whereof, the said parties of the first part have hereunto subscribed their names and affixed their seal of office at San Xavier del Bac, Arizona, this eighth day of December in the year of our Lord, one thousand, eight hundred and eighty.

(his — mark) LUIS. [SEAL.]

Witnesses to mark:

P. R. TULLY.

S. AINSA.

415 TERRITORY OF ARIZONA,
County of Pima, ss:

On this ninth day of December, A. D. One Thousand Eight Hundred and Eighty before me Santiago Ainsa, a Notary Public in and for the County of Pima, personally appeared Luis, whose name is subscribed to the annexed instrument as the party thereto known to be the person described in and who executed the said annexed instrument as the party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

SANTIAGO AINSA,
Notary Public.

(The Recorders' Certificates indicate that said deed was recorded at the request of C. B. Guittard, in Pima County, Arizona on June 2, 1914 and in Pinal County, Arizona, on June 8, 1914.)

"Q. Mr. Ainsa, I will ask your attention to the following deeds: First, a deed purporting to be made by Jose Maria Ochoa, Head Chief or Captain of the Papagos (Seventeen Villages) of Arizona and acting as Captain of the Papago village of Coyote, Arizona Territory and purported to convey an undivided half interest in the lands or grants belonging to and owned by said village, describing them, to Robert F. Hunter, Trustee. Please examine this deed and state whether you are the S. Ainsa whose name is attached to it as a witness. A. I signed as a witness and verified it as a notary.

Q. Is this also your name "Santiago Ainsa" who appears as the notary public in the acknowledgment? A. Yes, sir, but I say this, that when these deeds were executed I never read them except-
416 ing the heading, the parties and a general description. I did not put in the description of land in Arizona, so and so, describing the land there, I did not. I only certified to the thing and took note in my notarial record book. * * *

Q. Next I show you a deed from Jose Maria Ochoa, Head Chief and Captain of seventeen villages of Papago Indians, citizens of the United States, and Miguel, Captain of the village or pueblo of Tecolote, in the Territory of Arizona, and purporting to convey to Robert F. Hunter, Trustee, an undivided half interest in the lands and grants of Tecolote, describing them. Please examine the signature of the witnesses and of the notary in this deed and say whether you are the S. Ainsa who witnessed it, and the Santiago Ainsa who took the acknowledgment. A. Yes, I am the party—I am the notary and the witness.

Q. Reverting for a moment to the deed which I showed you last, it also bears the name of Andrew Cronley as a witness? A. Yes.

Q. Did you see him sign that as a witness? A. Oh, yes, they were signed before me.

Q. And in the deed I have last shown you, Beaird also signed as a witness, did you see him sign? A. They were all signed before me.

Q. I next show you a deed purporting to be made by Jose Maria Ochoa, Head Chief and Captain of seventeen villages of Papago Indian citizens of the United States, and Pablo, Captain of the village or pueblo of Tesota in the Territory of Arizona purporting to convey to Robert F. Hunter, Trustee, an undivided half interest in the lands and grants of Tesota, describing them. This bears the signature of S. Ainsa and P. R. Tully as witnesses, and the acknowledgment appears to have been taken before Santiago Ainsa. Are you the
417 man who witnessed and acknowledged it? A. Yes.

Q. Did you see the instrument witnessed by Tully? A.

Yes, I don't remember that erasure, I don't know what that is, I don't remember that.

Q. The name J. P. Salpointe is erased on that deed? A. I don't remember that.

Q. You know Tully's signature and your own? A. And Tully's, yes.

Counsel for plaintiff exhibited a similar form of deed to witness signed by Jose Maria Ochoa, Head Chief and Captain of seventeen villages of Papago Indians and Captain of the village or pueblo of Quitaca. Witness testified that he witnessed and acknowledged it and saw P. R. Tully also witness it.

Next counsel for plaintiff showed witness another deed, similar in form, executed by Jose Maria Ochoa, Head Chief and Captain of the Papagos of Arizona and Antoine, Captain of the village of Quajate, which deed bears the names of Andrew Cronley and S. Ainsa, as witnesses. Witness testified that he was the man who witnessed and acknowledged the deed and saw Mr. Cronley witness it.

Next counsel for plaintiff showed witness a deed made by Jose Maria Ochoa as Head Chief and Joaquin, Captain of the village of Bajio, conveying the lands of the village of Bajio or Bajiool and Cobabi, appearing to have been witnessed by P. R. Tully and S. Ainsa. Witness testified he witnessed and took the acknowledgment and saw Tully witness it.

Next counsel showed witness a deed similar in form made by Jose Maria Ochoa, Head Chief, and Clemente, Captain of villages of Anaca and Poso Solado, appearing to have been witnessed by Andrew Cronley and S. Ainsa. Witness testified that he witnessed and acknowledged same and saw Mr. Cronley witness it.

Next witness was shown a deed apparently made by Jose Maria Ochoa, Head Chief, and Julian, Captain of the village of Cacca. Witness testified that he witnessed and acknowledged the deed and saw Mr. Tully witness it.

418 Next witness was shown a deed similar in form, made by Ascension Rios, Captain of the village or pueblo of San Xavier del Bac. Witness testified that he witnessed and acknowledged the same and can identify the signature of Tully as a witness.

Next witness was shown a deed, similar in form, made by Jose Maria Ochoa, Head Chief, and acting as Captain of the village of Kakachemouk. Witness testified that he took the acknowledgment and can identify the signature of Beaird as a witness thereof.

Next witness was shown a deed, similar in form, appearing to be made by Jose Maria Ochoa, Head Chief, and acting as Captain of the village of Cubo and Ajo. Witness testified that he took the notarial acknowledgment and can identify the signature of Mr. Beaird as a witness.

Next witness was shown a deed, similar in form, appearing to be made by Jose Maria Ochoa, Head Chief and acting as Captain of the villages of Pissenemoh, Chupo, El Vaji and Chumes. Witness testified that he took the notarial acknowledgment and can identify the signature of Mr. D. A. Beaird as a witness.

Witness was next shown a deed, similar in form, made by Jose

Maria Ochoa, Head Chief, and acting as Captain of the village of Comobabi. Witness testified that he can identify his signature thereto as notary and the signature of D. A. Beaird as a witness.

Next witness was shown a deed, similar in form, appearing to be made by Jose Maria Ochoa, as Head Chief, and acting as Captain of the villages of Perigua, Chupo and Vache. Witness testified that he can identify his signature as witness and notary public and that of D. A. Beaird as witness.

Witness was next shown a deed, similar in form, appearing to be made by Jose Maria Ochoa, Head Chief and acting as Captain of the village of Quajuata and testified that he could identify his own signature as notary public and witness and that of D. A. Beaird as a witness.

419 Whereupon, attorney for the defendant offered said deeds in evidence and asked that they be marked Exhibits 2 to 16 both inclusive; that said deeds are similar in form, except that they purport to convey an undivided half interest in different tracts of land to Robert F. Hunter, Trustee, excepting therefrom the fields under cultivation.

"Q. I also ask attention to a power of attorney, purported to be executed by Luis, Captain of the village of Santa Rosa, in the Territory of Arizona, for himself and the inhabitants of said village and the villages of Aitij, Semilla-Quemada and Chaquima, running in favor of Robert F. Hunter, of Washington, D. C., and purported to appoint him attorney with powers as shown in the instrument. This appears to be witnessed by P. R. Tully and S. Ainsa and the acknowledgment taken by Santiago Ainsa as notary public. Do you recognize and identify your signatures as notary public and as a witness?
A. Yes.

Q. And that of Mr. Tully as a witness? A. Yes, sir.

Q. In the case of all these instruments that have been shown you was the signature of the grantor made by you, written by you?
A. The name was and they made a cross themselves.

Q. But what I mean is in the case of each one of these deeds, you wrote the name of the grantor in the deed? A. I did.

Whereupon, defendant offered in evidence said power of attorney and asked that same be marked Defendants' Exhibit No. 17, which contained substance as follows:

"Know all men by these presents, That we, 'Luis, Captain of the Village of Santa Rosa, in the Territory of Arizona, for himself and the inhabitants of said village and the villages of Aitiji, Semilla-Quemada and Chaquima, Citizens of the United States' and duly authorized and empowered to make, enter upon and execute,
420 Contracts, issue, make and acknowledge Powers of Attorney, and do other legal acts to bind and obligate the inhabitants of the said village of Santa Rosa in the Territory of Arizona, do by these presents make, constitute and appoint Robert F. Hunter of Washington, District of Columbia, our true and lawful attorney, to represent and prosecute in our name, or the names of the said inhabitants of said village before the Government of the United States

any of the branches thereof, whether Executive, Legislative, or Judicial, and any of its departments, or wherever necessary, any and all matter of difference, contest or dispute that may attend or arise in the course of settlement, adjustment, determination, compromise or recognition of our title, claims and demands, whether at Law or Equity, and of whatsoever nature, to and for certain grants or tracts of land situate in the said territory the title to which is vested in us or said inhabitants; and which said grants or tracts of land may in whole or in part have been held, claimed, granted, conveyed, or otherwise disposed of by the United States, as a part of the public domain, or have been so treated or regarded by any other persons or parties whomsoever, giving and granting to our said attorney full power and authority to take such action in the premises aforesaid as he may deem necessary, in order to recover from the United States, or its grantees, or any other persons or parties whomsoever, possession of any and all of said lands, that may have been conveyed by the United States, by patent or otherwise or that may be held, claimed or possessed by the United States, or by other persons or parties, in any manner whatsoever.

And full power and authority is further hereby given and granted our said attorney to settle, adjust or compromise all claims and demands whatsoever which we may have, whether at law or equity, and that may arise with respect to or concerning said lands, and to receive in settlement, in lieu of the lands thus conveyed, or
 421 held or possessed, a money equivalent therefor, the amount to be satisfactory to our said attorney, and to be by him determined.

Giving and granting to our said attorney full power and authority to do any and all legal acts in and about the premises herein cited and referred to, that may, in the opinion of our said attorney, be necessary in furtherance of the purposes herein set forth; whether by suits at law or in equity, by settlement, adjustment or compromise, and to the full extent of every power and authority, such as could be exercised by us if personally present.

Hereby granting to our said attorney, full powers of delegation, substitution and revocation. And as this power of attorney is accompanied with an interest vesting in our said attorney, for a valuable consideration, it is hereby made irrevocable.

And all powers of attorney or authorization, heretofore given or granted in or about these premises, are hereby revoked and cancelled.

In testimony whereof I have hereunto set my hand and affixed the official seal this 8th day of December, A. D. 1880, at San Xavier del Bac, Arizona.

(His x mark) LUIS. [SEAL.]

Witnesses to mark:

P. R. TULLY.

S. AINSA.

TERRITORY OF ARIZONA,

County of Pima, ss:

On this 9th day of December, A. D. one thousand eight hundred and eighty before me, Santiago Ainsa, a Notary Public in and for the

County of Pima, personally appeared Luis whose name is subscribed to the annexed instrument as the party thereto, known to me to be the person described in and who executed the said annexed instrument as the party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above
422 written.

[NOTARIAL SEAL.]

SANTIAGO AINSA,
Notary Public.

"Q. I show you another deed, purporting to be made by Jose Maria Ochoa, Head Chief and Captain of the consolidated villages of Papago Indian citizens of the United States, for himself and the inhabitants of said villages, and purporting to convey to Robert F. Hunter, Trustee, an undivided half interest in certain grants and tracts of land in Arizona, described as follows:

'Known as the Papago lands of Arizona, and being all the lands embraced within the limits and boundaries, to-wit: Commencing at the point where the Gila River empties into the Colorado River, and running along the Southern Bank of said Gila River to its point of junction with the Santa Cruz River; thence along the course of the Santa Cruz River to the line separating the Republic of Mexico, known as the Sonora Line, from the Territory of the United States; thence along said line to its point of intersection with the Colorado River; thence along the Eastern bank of said Colorado River to point of beginning, and containing Twenty-five Thousand (25,000) square miles, more or less.'

This appears to be signed by Ochoa and witnessed by Andrew Cronley and S. Ainsa and the acknowledgment taken before S. Ainsa, all on December 17, 1880.

"Q. You identify your signature as notary public and witness?
A. I identify my signature as witness and as notary."

Counsel stipulate that the instrument was duly recorded in Maricopa County, Arizona, June 2, 1919, Book 136, of Deeds, page 208.

Whereupon, defendant offered said deed in evidence as Defendants' Exhibit No. 18. Except as heretofore stated this deed is the same as, and in the same form of, the other deeds hereinbefore referred to.

423 "Q. An examination of the deeds which we have just put in evidence shows that four of them are acknowledged on December 7, 1880; three of them and the power of attorney from Luis are acknowledged December 9, 1880; two of them are acknowledged on December 17, 1880, and six of them on December 18, 1880. Do you remember taking the acknowledgments of such instruments on four different occasions in December, 1880? A. I do not remember, but it must be so if my signature states it.

Q. Of how many occasions have you actual recollection? A. Well, I cannot remember but two occasions at the Bishop's, those that I remember, but I don't remember the others.

Q. On the two occasions that you do remember was the meeting held at the Bishop's house in Tucson? A. Yes.

Q. Can you give any idea of how many Papago Indians were present on the first of these occasions? A. I don't know, there were a great many, more than twenty, I guess.

Q. Do you remember how many were present on the second occasion? A. No, I don't remember the first or the second, I cannot remember particularly."

I recognized Ascension Rios—he was Chief of San Xavier and the only one I knew. None of these Indians understood or spoke the English language, particularly at that time. There were no schools for them so that they were still the original tribes of Indians. They didn't know but a few Spanish Words, not enough to converse with anybody. These Indians could not carry on an ordinary conversation in Spanish—Ascension could a little, not much. I never had much to do with them except when they would come around to sell chickens or eggs and it was partly in Spanish. You
424 couldn't hold a conversation with them. Their Spanish was just the sort used in trading or selling. This interpreter, Teodora Trojel, lived at the village of San Xavier del Bac—she was a Mexican—she could speak Spanish perfectly, and Papago. She was living there for a long time, you know, I think she had grown up there. When the United States took this part of Arizona the village of San Xavier consisted of one-half Mexicans or half breed Indians that had already semi-assimilated with the two civilizations. This woman was one of those people. The United States decided that none but real *poor* Papagos had a right in the reservation in San Xavier and they expelled all the half civilized old Mexicans that had settled in that town as citizens. They had been there under the Mexican rule but the U. S. Department of Interior expelled all but one. This was one of the people. The other party was Maria Martinez, whose father had taken a piece of land next to the church. I was her attorney and I claimed that she had a right there—this woman was one of those women but she escaped because her husband was sort of a mechanic of the United States who was there to fix things, so that she spoke Papago very well—she was a very smart woman, could read and write, not an educated woman but a smart woman.

"Q. Do you know whether—did you observe anything tending to show that she was competent to understand such deeds and powers of attorney as we have put in evidence? A. No; I could not tell; everything was done outside of my knowledge, you see, as for how they were affected, they were affected the same as I was, I was affected by the Bishop's word and they were influenced by him. I was influenced by the Bishop, but they believed in the Bishop as something extraordinary and I suppose that they believed what the Bishop told them."

425 This woman was not a Mexican peon. Peons are just as intelligent as anyone else—if they are poor they are called peons—if they are rich, gentlemen. I suppose there was an interpreter present on all four occasions, because I could not state at any other time.

"Q. Do you remember whether there was one person on each occasion? A. My recollection is, I don't remember every time but there must have been somebody that asked these men whether that was their signature. I must have known it in some way."

When I took these acknowledgments the Indians were called by Mr. Hunter, or by somebody, before me and said their names were so and so, gave me their name and made their cross. Sometimes Mr. Hunter called them and sometimes the interpreter, I could not remember now. I think Mr. Hunter was always present. I don't remember now that on any of the occasions the instruments were read or interpreted to the Indians in my presence. I don't think more than one could read English, you know, she was interpreting whatever they told her was contained in those deeds. She did not read English, she did not know English, she interpreted in Spanish. I think she made a statement regarding each deed or instrument to the Indians, she talked to them before they signed. I don't remember how long she talked on each occasion, it was 39 years ago, you know; while these deeds and papers were being signed, I ascertained the nature of them, in a general way. They said they were selling land there. By the law of Arizona the notary is only compelled to take the names and in a general way, the land, etc. We were not compelled to express it, we were only to certify "this is my signature" whatever it was. I did not understand at the time that this transaction involved as much as 3,000 square miles of land. They never told me anything about it. I did not care to know about it—they were
426 lands for the Papagos whatever they were, I did not read the papers.

"Q. Now, state if you can any circumstances that occurred on any of these occasions which tended to show whether or not the Indians understood the contents or legal effect of those instruments? A. No, there was—I could not see anything. If I had seen or suspected anything I would have stopped that right there, see, but I did not suspect anything.

Q. But you don't know? A. I don't know but I did not suspect anything, if I had suspected that would have stopped the whole business.

Q. As to any of these instruments did you read aloud the acknowledgment to the Indians? A. No, no use, they could not understand me.

Q. Did you explain the purport of the acknowledgment to any of them? A. No, they acknowledged but I did not read it—it was only, 'is that your signature'—'sign this'—'make your mark.' That is all I had to do with this business.

Q. Then you did not read or ask the interpreter to read any of these instruments to the Indians? A. No.

Q. All of the papers we have put in evidence except one are deeds and that one is a power of attorney—did you know at the time you took any of these acknowledgments that one of the instruments was a power of attorney? A. I must have known at the time to make note in my book but I don't remember it."

My notarial records were burned here in San Francisco.

"Q. Some of these instruments appear to have been executed at Tucson and some at San Xavier. Have you any recollection of going to San Xavier to take acknowledgments? A. San Xavier; if you find one there, I must have gone there, if the papers say I went there. I went but I cannot recollect."

I knew Tully, Cronley and Beaird very well. Tully was a merchant and living in Tucson, of the firm of Tully, Ochoa and Company in the general merchandise business—it did business all over Arizona. It was the richest merchandise firm in Tucson. I don't think the Indians traded anything with anybody except to sell chickens but they did not use any civilized commodities and had no connection with them whatever. Beaird was not a Catholic but Tully and Cronley were Catholics. Cronley was a bookkeeper for Tully, Ochoa and Company. Beaird was an undertaker.

"Q. Do you know this man Jose Maria Ochoa who signed so many of these instruments? A. I don't remember, you see these Indians have the habit of adopting names of Christian people that they fancy.

Q. Well, was there an Indian present named Jose Maria Ochoa? A. I suppose so when he signed it there but I could not tell you—the man that I knew slightly was that Rios."

The others I did not know they looked like Chinese, all the same kind—I could not tell one from the other.

Q. Do you know whether Jose Maria Ochoa had any connection with the Ochoa of the firm of Tully, Ochoa and Company? A. No, the story was that old man Ochoa had a child by some of these breeds, that is what they say.

Q. Is Tully, Cronley or Beaird still living? A. They are all dead. Bishop Salpointe is dead—he was older than I.

Q. Each of these deeds has a statement something like this: " * * * and to give legal force and effect to an agreement in writing made and entered into by and between said ——— and ——— at ——— on the — day of ———, A. D. 188-.' Was there anything said at any time in your presence as to what those words referred to? A. I never heard anything about it—I don't remember anything about it—I never was told anything about it."

Each of the deeds say one dollar was part of the consideration. I never saw it neither then no anywhere—I don't know of any other valuable and sufficient consideration as recited in the deed. Mr. Hunter, nor anyone else, said anything about what the considerations were. I lived in Arizona from '77 to '95—during that time

the knowledge I acquired of Papago Indians was just in a general way. In my litigation concerning the San Xavier title I had a lot to do with the people when I fought the case of Martinez vs. the United States. No school had been established in 1880 to teach English. At that time the Papago Indians had no knowledge of the legal forms of the white man, they had their own laws: I know that they did not know our laws.

Q. Now from your knowledge of the Papagos and from the appearance and demeanor and apparent intelligence or education exhibited by any of the Indians present on any of these occasions in 1880, state, as far as you can, the extent to which these Indians knew what they were doing or knew the nature of the instruments they were signing. A. To tell you what I know I tell you a fact that the court can judge whether they know or not. There was a man, a Papago, killed another Papago, he was arrested by the authorities and charged with murder, he put his defense; he says, 'according to our custom—this man was a medicine man, he came to cure my child and my child died and our custom is that when a medicine man fails to cure and the patient dies, we kill him.' They have not got many medicine men. You can take that but
429 that is all the knowledge they know, that is, that is all the knowledge we know of them in their own affairs.

This incident happened at the time I was there, you can find it in the record in Tucson. The jury found him guilty just the same. It happened about 1880.

Cross-examination by Mr. Post:

The first time I knew of this I was called by the Catholic Bishop on the same day some of the deeds were signed. I don't remember how many were signed that day. I could not remember just what the Bishop said, he introduced me to Mr. Hunter saying he came from Washington from the Catholic Mission, or Department of Society, I don't know what, and that he came to look after the interest of those Papagos. I understood that these deeds were made for the benefit of the Indians but as Catholic Indians and members of the church. At that time the Catholic Church used to send a Priest once in two weeks to say mass at San Xavier; that is all that I know about the Missions among the Indians—the Nuns kept a little church at San Xavier—I don't know why by they stopped it—I think the United States stopped them—In 1880 the government had a representative for the Indians. They had an Indian agent, I suppose they had a limited reservation because in my suit they claimed that the land was part of the reservation. Part of the instruments were signed at the Bishop's house and the deeds say some of them were signed at San Xavier, so I must have gone there, but I don't know by recollection. When I made a record as notary I always made them correct, showing the correct date, the place, the parties and if it were dated the 8th day of December, then it was made on that day. To the best of my knowledge these instruments were made as of the date shown on the acknowledgment. They must have been

because that was my practice. The first deeds were signed at the Bishop's house, I suppose, December 7th—then on the ones dated

8th of December they must have been signed also at the
430 Bishop's house, but I have no recollection, I only know by what the papers say but I do recollect the first deeds were

signed at the Bishop's house—none were signed in my office. The first day there were about 20 Indians present but all of them did not sign. They sat there like mummies. I could not tell what the interpreter said, something or other, but what, I could not tell, I

could not tell that they had a general interest in the matter. They came there for the purpose of these deeds because the Bishop told me that these Indians were going through this transaction, so that

is all I know; but whether they were chiefs, or why they came, I don't know. I don't remember that the same interpreter acted on

all occasions—I remember the first time. My acknowledgment states and I believe that these Indians were signing freely and voluntarily. There was nothing to indicate anything different that I

could tell, if there had been anything I would have stopped it right there, if I had suspected. You see these Indians, each one was introduced to me, "this is so and so," by some responsible party. I

forget now who it was so I put it down. Of course I did not know the Indian—each Indian acknowledged his name. I don't remember Jose Maria Ochoa. He was introduced to me as such and such

a person. As a matter of fact I don't remember that such a person as Jose Maria Ochoa was introduced to me, I knew the moment I

saw my name. My name is hard to copy—I know that signature is correct. All of these cases where the name Santiago Ainsa appears

it is mine. All the witnesses were business men, of good reputation in Tucson. Mr. Tully was Chief of Tully, Ochoa and Company, a

well known business house there. The Indians delivered products to the populace in general. They did not have funds enough to trade

with any company—they would not trade with Tully, Ochoa and Company, you know. I don't know whether Mr. Tully was acquainted with the Indians or not—he was there before me—had been

there before me 20 years, so he must have been acquainted with the Indians as much as white people know Indians. Mr. Baird and the

other witness had been there long before I was. Perhaps
431 there was other interpreters there but this is the only one I

remember. There might have been others that I have forgotten. When I took the acknowledgments I knew in a general way

the nature of the papers. I knew whether it was a deed or power of attorney. I knew the Indians to be the grantors in these instruments. I did not pay any particular attention to the description of the property because I never believed in the Papago claims so I did not mind what it was. I suppose the Bishop knew the Indians, if

anyone he ought to have known them. Relative to the instrument marked on the back "Power of Attorney" executed by Ascension Rios, Captain of the village or pueblo of San Xavier, witnessed by P. R. Tully and S. Ainsa, this instrument was actually signed by the

said Ascension Rios before me and witnessed by Tully and by me and the acknowledgment was my acknowledgment as a notary public.

Whereupon the last mentioned power of attorney executed by said Rios was introduced in evidence as Plaintiff's Exhibit "1". Said exhibit is a power of attorney similar in form to Defendants Exhibit "17" except that it is executed by Rios and covers other lands.

The power of attorney executed by Jose Maria Ochoa and by Julian, witnessed by S. Ainsa and P. R. Tully on the 7th day of December and acknowledged on the 7th day of December before Santiago Ainsa, was acknowledged and witnessed by me on the date it bears and that is Mr. Tully's signature.

Whereupon the power of attorney last referred to was introduced in evidence as Plaintiff's Exhibit "2". Said power of attorney is similar in form to Defendant's Exhibit 17—it is signed by Jose Maria Ochoa and by Julian acting for other villages.

The power of attorney executed by Jose Maria Ochoa and Clemente, bearing date the 17th day of December, 1880, was acknowledged to me by Jose Maria Ochoa and Clemente, was witnessed by Andrew Cronley and S. Ainsa on that day. It appears that there is no date to the instrument itself.

432 Whereupon the last referred to power of attorney was introduced in evidence as Plaintiff's Exhibit No. "3". Said exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa and Clemente acting as Captain in behalf of other villages.

I also took the acknowledgment and witnessed the power of attorney executed by Jose Maria Ochoa and Joaquin, witnesses signed in my presence.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit "4". Said exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa and Joaquin acting in behalf of other villages.

I also took the acknowledgment of the power of attorney executed by Jose Maria Ochoa and Antoine on the date it bears.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit No. "5" which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa and Antoine.

I also took the acknowledgment of the power of attorney executed before me the 7th day of December, 1880, signed by Jose Maria Ochoa. It was acknowledged and executed before me as notary public.

Whereupon the last mentioned power of attorney was introduced as Plaintiff's Exhibit "6". Said exhibit is a power of attorney

similar in form to Defendants' Exhibit 17 except that it is executed only by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney executed by Jose Maria Ochoa and Pablo which was acknowledged by me on the 7th day of December, 1880.

Whereupon said power of attorney was introduced in evidence as Plaintiff's Exhibit No. "7", which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa and Pablo.

433 I also took the acknowledgment of the power of attorney executed by Jose Maria Ochoa on the 17th day of December, 1880, witnessed by Andrew Cronley and S. Ainsa.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit No. "8", which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney executed by Jose Maria Ochoa and Miguel on the 7th day of December, 1880.

Whereupon said last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit "9", which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa and Miguel.

I also took the acknowledgment of the power of attorney executed by Jose Maria Ochoa, witnessed by D. A. Beaird and S. Ainsa on the 18th day of December, 1880.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit "10", which exhibit is a power of attorney similar in form to Defendants Exhibit 17 except that it is executed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney executed by Jose Maria Ochoa on the 18th day of December, 1880, witnessed by D. A. Beaird and S. Ainsa.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit "11", which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney dated the 18th day of December, 1880, signed and acknowledged
434 by Jose Maria Ochoa, witnessed by D. A. Beaird and S. Ainsa.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit No. "12", which exhibit is a

power of attorney similar in form to Defendants' Exhibit 17 except that it was signed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney dated the 18th day of December, 1880, executed and acknowledged by Jose Maria Ochoa, witnessed by D. A. Beaird and S. Ainsa.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit No. "13", which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of th power of attorney executed by Jose Maria Ochoa on the 18th day of December, 1880, witnessed by D. A. Beaird and S. Ainsa.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit No. "14", which exhibit is a power of attorney similar in form to Defendants' Exhibit 17 except that it is executed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney dated the 18th day of December 1880, witnessed by D. A. Beaird and S. Ainsa.

Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit "15", which exhibit is a power of attorney similar in form to Defendant's Exhibit 17 except that it is executed by Jose Maria Ochoa acting as Captain of other villages.

I also took the acknowledgment of the power of attorney dated on the 17th day of December, 1880, executed and acknowledged by Jose Maria Ochoa and witnessed by Andrew Cronley and S. Ainsa.

435 Whereupon the last mentioned power of attorney was introduced in evidence as Plaintiff's Exhibit "16," and is executed by Jose Maria Ochoa as Head Chief and Captain of seventeen pueblos of Papago Indians and appears to have been recorded on the 2nd day of June, 1919, Book 4 of Powers of Attorney, page 445, records of Maricopa County, Arizona.

"Q. In all these instruments that have been shown you, you have recognized your signature as notary as actually being your signature? A. Yes, sir.

Q. In all cases they were acknowledged by the persons purporting to have signed them? A. I suppose so.

Q. To the best of your knowledge? A. To the best of my knowledge.

Q. And you do know that the persons who signed as witnesses actually did sign as witnesses at that time. A. Yes, sir.

Q. And you know the witnesses in all cases? A. Yes, sir.

Q. And knew their signatures? A. Yes, sir.

Redirect examination by Mr. Fraser:

I don't remember that in each case the Indian made the mark himself on each power of attorney except that I saw my signature, it must be so. All I remember is that my signature is there—I remember that, you know. My recollection is entirely blank on the matter.

"Q. Take for example the power given by Jose Maria Ochoa acting as Captain of the villages of Cubo and Aji, dated and acknowledged December 18, 1880—examine the signature and the mark of Ochoa—do you know who wrote the name of Jose Maria Ochoa there? A. I don't remember anything about it, you know, I only see it there.

Q. Does it not seem to you that the same person who wrote the name made the mark? A. You see my signature, my writing
436 is very much like this, you see—I have no recollection except my name there, I see my name there, that is very evidently my signature—that S; nobody could make that S. and that i of my name here; but I could not say, I don't remember, you know."

I do not personally remember that I wrote that name Jose Maria Ochoa. It looks to me a little strange. Take another instance—the power of attorney made by Jose Maria Ochoa acting as Captain of Coyote and dated and acknowledged December 17, 1880. I could not tell whether or not I wrote the name Jose Maria Ochoa there—it looks to me that that was not my writing, just the same as this, that is not my writing (indicating); this is mine (indicating).

"Q. When you say 'this' you are referring to the acknowledgment?

Mr. Post, counsel for plaintiff:

"Q. You are referring to your name? A. But this was prepared by the same person that made this (indicating).

Mr. Fraser:

"Q. The same person that made the body of the deed? A. You see the Tucson; I never made a T like that; see my a and that a was very different.

Q. Do you know whether or not Jose Maria Ochoa was written there in your presence? A. Oh, I could not tell you, it might have been, you know.

Q. It might have been or might not. A. Or might not."

Mr. Andrew Cronley or I did not write that name, you see, the person who wrote that name ought to have put his name underneath. It might have been proven to me that this person may have been present and so I wrote that. You see this party who made this may have told me "that is my signature," so the Indian cannot
437 object because whenever I have made the mark myself I wrote the name of the party. There must have been some of the deed in which I made the cross.

"Q. Referring to the power of attorney made by Jose Maria Ochoa, Head Chief and Captain of the Papagos of Arizona, and acting as Captain of the village of Kakachemouk and dated and acknowledged

December 18, 1880, can you state by examining that instrument whether you wrote the name Jose Maria Ochoa or not? A. Well, I am positive that I did not write the Jose Maria Ochoa there. I reflect and observe that that is not my writing—this is mine (indicating) how I came to do it now I cannot tell.

Q. You don't know who did write that. A. I don't know.

Q. Do you remember whether Ochoa himself made his mark? A. I don't remember anything about it.

Mr. Fraser: I desire to call the attention of counsel, of the witnesses and of the court, to the fact that in the case of the power now in question and a number of the others the mark appears to have been made by the same person that signed the name.

Answer cont'd: You might as well put it down that this is not in my writing, the Jose Maria Ochoa, the mark is not my writing—now I insist upon putting that in. I don't want my name to be mixed up with anything in this case that is objectionable—I acted as notary as an honest man; I don't want to appear in any other way; but this is not my writing, now I am positive, nor that (indicating) and you show me the others and I will tell you.

Q. Let me ask you one other question in this regard—did any of these Indians write his own name on any of these instruments? A.

Never; none of them could write. How my name came to be
438 there I don't know, but they must have proven to me that it was all right.

Q. Look at the power given by Jose Maria Ochoa acting as Captain of the village of Comobabi and dated and acknowledged December 18, did you write that signature. A. No, I did not write that.

Q. Did you make the mark? A. I don't remember, there are so many of these instruments, how am I going to remember?

Q. Similarly with regard to the power of the same Ochoa as Captain of the village of Quajuata, dated and acknowledged December 18, did you write the name of Jose Maria Ochoa there? A. No.

Q. Similarly with regard to the power of Jose Maria Ochoa acting as Captain of the villages of Perigua, Chupo and Vache and dated and acknowledged December 18, did you write the name Jose Maria Ochoa? A. No.

Q. You say in each case the Indian did not write his own name? A. No, the Indians did not write their names.

Q. Do you know in this case, or in any of these cases, who made the mark? A. No, I don't remember.

Q. Similarly in the case of the power given by Jose Maria Ochoa acting as Captain of the village of Pissenemoh and three other villages, dated and acknowledged December 18, 1880, did you write the name Jose Maria Ochoa? A. No.

Q. Did you make the mark? A. I don't remember.

I say the Indian made the mark, he acknowledged it but unless I saw the man make the mark I would not acknowledge but this I don't remember. I have forgotten half of those deeds.

In the case of the power given Ascension Rios, Captain of the village of San Xavier and dated December 8, 1880, I did not write the name of Ascension Rios.

Referring to the power of attorney given by Jose Maria Ochoa and Julian, Captain of the village of Cacca, dated and acknowledged December 7, 1880, I think I wrote the name Jose Maria Ochoa and Julian also.

Relative to the power of attorney acknowledged December 17, 1880, without date, I think I wrote the name Jose Maria Ochoa and Clemente—I am not going by recollection but by my hand writing. I also wrote Jose Maria Ochoa and Joaquin in the power dated and acknowledged December 19, 1880. I think I wrote the two signatures of the two grantors in the power acknowledged December 17, 1880 by Jose Maria Ochoa and Antoine. I think I wrote the two signatures of Jose Maria Ochoa and Miguel, Captain of the village of Tecolote, dated and acknowledged December 7, 1880. I wrote the signatures of the grantors in the power by Jose Maria Ochoa and Pablo of Tesota, dated and acknowledged December 7, 1880. I wrote the signatures of the same Ochoa, Captain of the village of Quitaca, dated and acknowledged December 7, 1880.

I did not write the signatures of the same Ochoa acting as Captain of the villages of Cubo and Ajo, dated and acknowledged December 18, 1880.

"Q. Mr. Ainsa, do you remember that in September, 1919, you answered a number of written interrogatories that I sent you and made affidavit to the truth of what you said? A. Yes.

Q. Now I want to call your attention to two or three questions and answers:

Question No. 26. Was there an interpreter present at the first of these occasions that you recall? Answer. I have said that Teodora Trojel was present.

Question No. 28. If you say that the interpreter was a woman, tell all you can to identify her, giving her name and place of residence if you can and describe her appearance, if you remember it. Answer. I knew this Teodora Trojel slightly, she used to live in the town of San Xavier del Bac among the Indians—I could not describe her, she was a common illiterate woman."

440 I say illiterate, I mean she could read and write but she did not know anything; my interpretation is not that she could not read or write but that she was not educated, but she could read and write like the ordinary ignorant woman—she was ignorant, that is to say, an uneducated woman.

"Q. I will go on with another question:

Question No. 33. Tell, if you know, whether this interpreter (Teodora Trojel) was, or appeared to be, a woman of education? Answer. She was an ignorant illiterate woman.

Question No. 34. State whether or not she was, or appeared to be, a woman of intelligence? Answer. No, sir.

"Q. No, do those questions and answers that I have read correctly express your recollection of this woman? A. Yes, you had better ask the question now because since this case has come up, of course, my mind has been going back, you see; all these things I wrote for

your information at your request and the best I could remember at the time but when I say this was an illiterate person I mean she was a common woman of the people but she was far from unintelligent; but she made so much trouble she had to be expelled, all the time interfering with everybody wherever she went, but I mean to say by ignorant I meant one of those persons who don't know anything except a common life, but with an extraordinary bright intellect that has not been educated—I could not describe a person like that—a person who has got enough intelligence to know how to make mischief.

Q. Now, I will call your attention to another question and answer in this affidavit:

441 Question No. 91. From the knowledge so acquired, that is, from your knowledge of the Papagos acquired during your residence in Arizona and from the appearance and demeanor and degree of intelligence or education exhibited by any of the Indians present on any of the occasions in December, 1880, at which these instruments were signed or acknowledged, state, so far as you are able to, the extent to which these Indians understood what they were doing or understood what was the nature of the instrument which you signed? Answer. From my knowledge of the character of the Papago Indians and their practices and their knowledge of that time I considered that they were perfectly incapable of comprehending anything whatsoever of their rights as to the lands and to the intent and purpose of these deeds and it was only from representations made by Hunter and those interested in these deeds that made them sign them with the idea that they would obtain some benefit from them but that is only my conjecture. I am perfectly sure that they were utterly incapable of comprehending what they were doing and if I acted in these deeds as the notary it was from my absolute faith that it was as represented by Bishop Salpointe that it was for their individual interests and to protect them from being deprived of their rights in the lands where they lived but as for them understanding the intent of what they were writing they could not come near it because at that time there were no Papago schools and there was not anyone of the Indians that understood even Spanish to be able to fathom the business and purposes of our civilization and the rights of property except in a vague kind of way like most ignorant human beings.

“Q. Does that still correctly express your knowledge of these Indians' character and familiarity with the white man's way and their capacity to understand what they were doing when they signed these instruments?

Mr. Post: Now, that is objected to * * *

Mr. Fraser: It is only supplementary, etc.

A. That you know would have to be decided by the judge whether it is admissible or not so that what you put down here is subject to the objection before the court.”

The facts are these Indian tribes of Arizona, or of any uncivilized country never understood either Mexican or American but under-

stood themselves. They had no written language but lived as a tribe based only upon customs which were their laws like the custom of killing the doctor. They had no judges, they had no politics and every man was himself a free agent only prevented by the opinion and the physical power of the other Indians. If one Indian did not behave they ostracized him—they have the physical power and force to overcome their enemies, they would overcome them by themselves and keep to themselves. They were utterly ignorant of the laws of Arizona or Mexico and, of course, did not understand but they had been associated with some Christian Priest whom they believed in partly. They did not comprehend our religion but they understood something that the Priest told them and believed in the Priest absolutely. I am perfectly sure that any judge who hears this case will say that they did this simply because the Bishop told them it was all right to do so, just the same as I who am a perfectly intelligent man and have graduated with a degree from Columbia University was influenced by the Bishop and I subscribed to those deeds and if I am honest these Indians were honest. Whether Mr. Hunter was the man or not, that I cannot tell because Mr. Hunter met them on the street and fixed it on the street and if he honestly did the work for them as he did the work, why he is entitled to whatever he can get. I signed those deeds and acted as a notary, believing it was good on the representation of the Bishop. I would not have if the Bishop had not told me it was so and from what I know of that man, you would have thought he was a privileged character and when he said, "Mr. Hunter here is Mr. Ainsa" and he wants me to do this, I would have believed him and so did the Indians and that is the reason, but I don't believe the Indians did know anything it contained. The answer just read corresponds with my present views with the understanding that I put, that it was the Bishop that we obeyed, they to make the grant and I to certify to it.

Recross-examination by Mr. Post:

It was my rule in every case in taking an acknowledgment that the mark be made in my presence by somebody and the general rule was that the Indian present made the mark and acknowledged it but I have no distinct recollection in each case. It was my rule that the name was written in my presence—so far as I know I followed my rule as to the making of these marks and the signing of the names in this case, and I am sure that in every case the Indian acknowledged his signature after it had been made. That was my rule. Before this time I had never had any particular transactions or relations with the Indians except the suit I had against the Government in that way. I had never lived among them. I have been down on the reservation many times and been through all that country. I could not talk to them—I sometimes hired a horse from them because I travelled through all that reservation in going to some mines that I had there. If a Papago signed a deed and it was explained to him that it was deeding his land he would understand this much, that if it was really property, as he understands it but not as we

understood it. They have original ideas that a tribe owns the whole place but so far as one man owning the place, they do not believe in it because a Papago believes where he is he has a right to be—they do not believe they have a right to possess forever and if one quits someone else may take it. They may claim a great region originally, but that does not especially interest them individually. They could understand agency—that somebody was going to act for them. Relative to the affidavit, parts of which was just read, I might have made some changes after reflecting on the matter. These questions were sent to me by Mr. Fraser and I wrote the answers. I had someone else typewrite the answers. Referring to the power of attorney of Luis and the inhabitants of the village of Santa Rosa, I think the name "Luis" was written by me.

Further direct examination by Mr. Fraser:

I do not understand the Papago language—I do not know what was said to the Indians by the interpreter—I said they made their mark—I could not tell what they were talking about.

Testimony of Marie Martinez de Berger

444 Pursuant to the first stipulation herein referred to the deposition of **Marie Martinez de Berger** was duly taken on behalf of defendants at Tucson, Arizona, on January 28, 1922, W. C. Reid and Louis Kleindienst present for plaintiff and George A. H. Fraser present for defendants, (Ralph Colvin, of Tucson, Ariz., acted as interpreter) which deposition was introduced and contained evidence as follows:

Direct examination by Mr. Reid:

My name is Marie Martinez de Berger; I reside at Tucson, Ariz. The 26th day of this month I am 76. After my marriage we went to take possession of the ranch at San Xavier Mission. About 1889 my husband was given the agency by the U. S. Government. Crouse (or Krause) was the agent at Sacaton then and he named him as agent at the Mission. He had owned that ranch at San Xavier during the life of my parents; when the government put us off of there we gave possession of that Mission. That property had been given to us by the Mexican Government. We had it for many years—it is located right close to the Mission, just back of that little mountain there at the Mission—near the Mission there are two mountains and the ranch is in the center between them. I lived there from the time I was a small child until I was first married in 1861. After the death of my first husband I married Mr. Berger while living in Tucson in 1878. Since I was born I knew the people who lived at San Xavier and the Papagos also—I knew Teodora Trojel very well from the time I was a small child until she left there. The Mexican Government, which existed at that time ran her away from there on account of her bad conduct.

"The Interpreter: She refers to the place as a pueblo.

Mr. Reid: Let the record show that witness refers to the locality as a pueblo."

Teodora Trojel was a Mexican—I know it because her mother said so and her mother was married to a Papago, but after she left the

445 Papago she gave birth to Teodora Trojel—she spoke only Spanish—I don't think she could speak Papago because they never talked to her—she had a Papago woman who acted as interpreter for her. There were more or less than 500 people living at San Xavier at that time—the people there did not think that Teodora Trojel was peaceful. She always wanted to row with people she was always disturbing things; she did not tell the truth—that was her reason or method of disturbing—the people there did not think she told the truth; no one had faith in her.

Cross-examination by Mr. Kleindienst:

I do not speak English, only one or two words—I understand some words only of Papago. I knew Jose Maria Ochoa, who was called Con Quien, very well; he spoke Spanish very well. I never heard Teodora Trojel converse with Con Quien. I was acquainted very well with Ascension Rios; he was captain of the Papagos at the Mission. Con Quien was captain of the town of Cobabi.

The Interpreter: I used the word "town" for pueblo—she used pueblo. I heard that he was captain of the town of Cobabi, but others thought he had to do with all the towns. Ascension Rios spoke Spanish very well. The Papagos generally spoke Spanish—they understood Spanish very well because they lived in the same place the Mexicans did. I did not see Teodora Trojel born but her mother told me she was born at San Xavier—I think she was much older than I because when I was a child she was a woman walking in the streets. I don't know where Teodora's mother was born but she was never married except to the Papago, the Papago had died and I never knew him. The Mission and my home were divided by the mountain.

"Q. In that pueblo did the Mexicans live by themselves in one part and the Papagos in another part? A. They lived mixed.

Q. Did you know Chico Francisco Tijeras? A. I did not know him—the people said he was the husband of the mother of Teodora Trojel.

446 Did you ever associate personally with Teodora? A. No, Senor.

Q. Did you ever visit her place? A. Yes, but I never had any relations with her.

Q. Why? A. I did not like her society, or her actions or her friendship.

Q. Did you go to her house and talk over some letters that she had written to Washington about you once? A. I never stepped into her house.

Mr. Kleindienst (to interpreter): What did she state first?

The Interpreter: She said something about her husband making the complaint.

Q. Then it was your husband who complained about her writing

letters to Washington about the Bergers. A. This Teodora wrote some letters to Washington, lies about us, and the Government at Washington sent the letters to my husband.

Q. You did not like her for that, did you? A. For that and other things, no decent people associated with her.

Q. What was Teodora Trojel's husband's name? A. Guillermo Trojel (William Trojel).

Q. What official position did William Trojel at any time hold? A. When I knew him he did not have any official position but he told the people of the town that he had been a soldier.

Q. What did he do at San Xavier? A. Nothing.

Q. Was he the Indian interpreter? A. No, I don't know; he might have been some time—I did not know of his being interpreter for the Papagos."

After I married Mr. Berger I moved to my ranch at San Xavier and left there in 1885 when the government took the ranch away from us because of the bad letters *shw* had written to Washington. Mr. Wheeler, who was then the agent at Sacaton, gave us notice to get out. Mr. Trojel was with him in a buggy and the soldiers were on horseback to put us off the ranch—we were put off by order of the government—the soldiers put us off by force. My husband came to

the Court to ask that they stop the disorders out there and I
447 remained on the ranch alone but the agent took me by the wrist and put me off. I looked for an arm to defend myself but I could not find anything, they had taken them away.

"Q. What did you have? A. I did not have anything—I looked for something.

Q. Did you have a bootjack? A. Oh yes, with that I struck Mr. Trojel here on the face near the eye."

A company of soldiers lived in my house and a deputy marshal who was out there, told me he had heard they wanted to burn the place down but they did not do it.

Redirect examination by Mr. Fraser:

It is a little mountain between my ranch and the Mission. It is on the edge of the ranch and is the hill close to the Mission Church and on the top of which there is now a cross. I could walk from the ranch to the pueblo in 10 minutes. I mean the Papagos o- San Xavier generally spoke Spanish—they spoke Spanish because of the commerce between them, trading back and forth, and as neighbors they always spoke in Spanish. The Papagos of the Mission were not well educated in those days—there were no schools for the whites much less for the Papagos—they knew nothing about the white man's laws. After I left San Xavier I never went back there to live.

Recross-examination by Mr. Kleindienst:

Teodora Trojel caused a good deal of trouble between the Papagos and the Mexicans out there. She was always telling the Papagos to make trouble for the Mexicans—she did not want to obey the Government,—she was always with the Papagos and trying to get them to

make trouble against the Mexicans—she was on the side for a part of the Papagos. I read and write in my language. I say that the Indians spoke Spanish because they were associated with the Mexicans at San Xavier and Con Quien spoke Spanish very well—he associated with the Mexicans at San Xavier—he came there
 448 and knew many people; he was very friendly with the Mexicans and he was friendly with other people besides, with all the Mexicans here in Tucson—he knew all the people here. I travelled through the Papago country outside of San Xavier when I was a child. One time when I was a small child my father had to leave Tucson because of an attack by the Apaches—in order to save the cattle which the Apaches were stealing he had to take them out to the Papago pueblos because out there it was very safe. He stayed there 6 months only, at different places—in Fresnal and afterwards in Soni—we were in Quijotoas some weeks also and returned again to the Mission after the Apaches quieted. I was five years old. My father did not speak Papago—while out in that country he talked to the Papagos in a friendly way because the Papagos spoke Spanish. My father got permission to go there from the captains who lived out there—he paid them for their water and all the work he caused them with his cattle. The Papagos were a peaceful law abiding people—they were very quiet—I don't know what law they obeyed in that time the Mexican Government existed here. The Indians had rules and laws of their own—I did not understand it. I did not live out there sufficient time to learn how well the Papagos spoke Spanish and was not of an age to notice all that business.

Pursuant to the first stipulation herein referred to, the deposition of **Jose X. Pablo** was duly taken on behalf of defendants at Sells, Jan. 31, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

My name is Jose X. Pablo. I live at Sells, Arizona, I am stockman for the Papago reservation; I have been educated in English by attending the Tucson Training School, which is graded up to about the 8th grade in the public schools—I finished there. Am a full blood Papago Indian, between 39 and 40 years of age. I have lived on or near the Papago Reservation all my life and am familiar
 449 with the entire Papago country. This suit concerns the region generally known as the Santa Rosa, and I am familiar with that part of the country—I go there 7 or 8 times a year—have been doing so since I was about 15 years old. I am acquainted with many people of that community. The name Santa Rosa is not applied to any one village or place there. The name is used principally among the Papagos in talking with white people or those not acquainted with the Indian language. It signifies the villages in that valley. The villages under that name are Akehin, Kiachemuck, Achi, and Anegam is north. Taking the Santa Rosa valley as a whole there are other Papago villages in it—Komolik, Quijote and Viau-Viau,

which is called Cocklebur. These are the villages north from the Santa Rosa, and south there is Oitak or Little Fields and Secoolhemet. Vinumkirk called Iron Pipe and Curlipatwalki and at the end of the valley there is Big Fields. These are all the villages in the valley. The valley is about 40 or 45 miles long and 12 or 15 miles wide. Anegam is the farthest north and about 4 miles from Kiachemuck. Going about 3 miles south from Kiachemuck you come next to Akchin. Achi is northeast about 2 miles from Kiachemuck. These villages are separate settlements. When the Papagos are speaking to white men they do not ever use the words Santa Rosa to designate any one of these villages. One of these villages is being called Santa Rosa by white men now—it is the one where the day school is at Kiachemuck—the name has been so applied since the day school has been there. In my memory the Papagos have never spoken of any one of these villages by the name of Santa Rosa unless they are talking to white men—in speaking among themselves the Papagos never use the term pueblo of Santa Rosa. The Papago custom to move from a valley village to mountain village at certain times of the year is governed usually on account of water. The inhabitants of these Santa Rosa villages have no special time to go to the mountains.

450 Whenever there is no water in the valley they go to the mountains where the wells are. The people of the village of

Kiachemuck go to the mountain villages of Covered Wells, Brownell and Nocipak. The people of Achi to Silymarki. The people of Akchin go to Comobabi and Cababi. The people of Anegam go to the mountain village of Chiripau. Some of the Anegam people go to Komolik. Some go to Poso Salado. Covered Wells is about 18 miles from Kiachemuck—Brownell about 12 or 13 miles—Cababi about 25 miles—Silymarki about 20 miles from Achi, Comobabi about 20 miles from Akchin; Cababi 12 or 13 miles from Akchin; Komolik about 10 or 12 miles from Anegam; Poso Salado about 17 miles from Anegam. I think the Papagos spend about the same length of time in the valley as in the mountains. There is a Papago word that sounds something like Ooitak—it means fields—the Papagos apply this word to the valley districts or villages. The Papagos have never called themselves pueblo Indians—they call themselves Ooitam, just a tribal name with no particular meaning. Taking the valley villages of the Santa Rosa group, the farthest distance to which the fields of any village extend around the village is between $1\frac{1}{2}$ and 2 miles—this has been so far as I remember. I remember Santa Rosa villages about 20 years back—these villages have been in the same place during this time. As far as I can remember each family cultivates from 15 to about 40 or 45 acres. The people of these villages raise cattle and horses and burros—they raise no sheep, goats or pigs—the number of stock they owned was fewer 20 years ago than now—I think that it has increased about 50 per cent during the time that I can remember. This is true of the people in the south mostly, not quite so much in the Santa Rosa valley. The reason that the number of cattle is larger now is that water has been one question, they have looked after them more. In

recent years there have been more wells dug, some by the Papagos and some by the Government.

451 "Q. Were you present recently when Mr. McKay testified as to the boundaries of a certain tract of land claimed in this suit and called the Santa Rosa tract? A. Yes, sir.

Q. You heard his testimony on that subject? A. Yes.

Q. You remember, he described a tract beginning at a point called Kabitque, running south 30 miles to a point called Okomo, then west 24 miles to a point called Mescalero, thence north 30 miles to Sierra Cabeza and thence to the place of beginning Within your recollection has anyone of the Papago villages claimed to own that tract? A. No, sir.

Q. Has the entire group of the Papago villages that you have mentioned in the Santa Rosa vicinity claimed to own that tract? A. No, sir.

Q. Did you ever hear of that as a definite tract before this suit was started? A. I never did.

Q. Does any Papago village that you know of claim to own any definite tract of land as against any other Papago village? A. No, sir.

Q. Has any Papago village ever said that the land on this side of some line belongs to us and the land on the other side belongs to some other community? A. No, sir.

Q. According to Papago custom and law who owns the land around a village? A. The Papagos claim it—they have it not only by law but they claim it as theirs.

Q. Do they claim, too, that the different families own the fields or that the whole village claims the fields together? A. The cultivated fields the families claim.

Q. And when the head of the family dies who owns the fields that family cultivated? A. The family."

As far back as I can remember this custom has existed. The Papago tribe own the whole country and any Papago can
452 move and settle where he pleases unless the ground is owned or occupied by another Papago. I know of instances where families left fields that they were cultivating and took up other fields. They did not have to get permission from the chief or anyone to do so. When they move in this way they don't sell or give the fields to somebody else but just leave them. I know the people have deserted Quitac close to Iron Pipe village altogether. Quite a good many have moved away from Tecolote and Fresnal also. The tradition of the Papago people is that they first gathered into villages because they were afraid of the Apaches who used to raid the country. According to Papago law and custom I never heard of a Papago village owning a tract of land as a village. The cattle belonged to different individuals and not to the whole village in common. They would range the entire country at will, ranging within 8 miles of where there is water. In the organization and form of government of the Papagos each village used to have a chief—and one man is usually head of a village, now. As far back as I can remember one man acted as chief for not more than one village. There are two different ways of choosing a chief—one by heredity and one by the people.

It was more common that when a chief died his son became chief instead. As to the other way, usually when the chief died and had no son, he would tell one of his near relatives, "this man after I die will take my place." Usually they would get the people together and they would agree that this relative of the chief become head. In such a meeting all of the men would get together. Now it is about like your elections, somewhat modern. Going as far back as I can remember the chief was the attorney, the prosecuting attorney and the judge, and sometimes he would do the punishing for any wrong. The chief usually had no council—when he did have a council they were not real councils, just usually when there was anything to talk about the principal men of the village gathered and talked about it.

453 These meetings were held not at fixed times but when there was something to talk about. For example, when any man did anything wrong he usually called the people together to see what to do about it, whether to punish him or to free him. Then in later years white people came on the reservation—they had some business, school matters or other things, and the chief called the principal men of the village to hear what they had to say about it. Within my recollection the chief would not have the power to do anything affecting the land around the village without calling a council of the inhabitants. There is no fixed number of members of the council. The number is different at different times. The Papagos never use the term *governadors* or *captains*—sometimes they use *governor*, not a Papago word but corrupted Spanish. Within my recollection, even if a chief had called a council at any time he would not have the right to sell or give away an interest in the lands around a village. A chief could not give the right to some white man to bring suit in court affecting the lands around a village without calling a council. Within my recollection, Papagos have not had head chiefs as well as chiefs. I have heard of *Con Quien*—I don't think I ever saw him—I never heard of him or anyone else being head chief over all the Papagos. In a general way the boundaries of the Papago country claimed by them is *Baboquivari* on the east; *Ajo* on the west; Mexican boundary on the south and close to the southern Pacific Railroad on the north. The Papago people are divided into three different groups—one we call *Tortoquin*—one *Korklorote* and one *Hohula*. The first group occupies the land north of *Sells*—the next usually occupies the extreme southern section of the country along the Mexican boundary—the third, usually west of the *Quijotoas*, along the *Ajo* country and north of the mountains. The greater part of the country claimed by the Papagos is now covered by the Papago reservation. There are more adobes now than there were 20 years ago. In the old days houses were usually built of ocatillas and sahuaro ribs with mud plaster—some of these and some of the
454 dome shaped houses still exist. An ordinary family of 5 people could build a pretty good cactus rib house in about a week—it would have to be repaired from time to time—if they did not, it would not last much more than 5 years—none were more than one story high. In the old days the Papagos used to destroy a house or abandon it after a death had occurred in it. They still do this in some

parts of the reservation. They have no written language. I was between 10 and 12 years when I went to school. Very few Papagos could understand English as far back as I can remember. It is different now on account of the schools. Many spoke broken Spanish usually in dealing with Mexicans in a business way. There were no schools then on what is now the reservation. If any Papago went to school then it was to Sacaton on the Pima reservation or to Albuquerque, New Mexico, or Grant Junction. About that time the Tucson school was started. I first heard of this suit of the Pueblo of Santa Rosa against the Secretary of the Interior when some of the government officials told us about it—I think it was along about 1910; I am not sure of the date. I was present at a meeting held April 20, 1918, called by Mr. McCormick, Mr. Thackeray and Mr. Bowie to consider the matter of this suit—there were about 50 Indians present—some Santa Rosa Indians were there. Mr. McCormick and Mr. Bowie spoke—they asked the Indians if they knew anything about this suit and deeds and powers of attorney that were said to have been given in 1880 by various Papago chiefs to Robert F. Hunter. The Indians said they knew nothing about it. A few Indians present spoke but not all. These questions were asked the entire meeting and the Indians who said they had not heard of them spoke before the entire meeting. Then there was a committee appointed at the meeting to investigate into this matter and look up and see if there was anybody on the reservation who knew about the suit and these people. I don't

remember who the members of that committee were—I was
455 not present when the Committee reported—Mr. McCormick told me about the report, I think they had another meeting but I don't remember that I was there. In talking to my people I believe I have made inquiries among the Papagos as to whether they had ever heard of this suit or these deeds and powers of attorney. I asked them about it once in a while. I recall travelling about with Mr. Thackeray to inquire into the knowledge of the Indians as to this suit—that was before the meeting I have just described. I believe I was living at Tucson at that time and Mr. Thackeray came along and told me he wanted me to go to the reservation with him. We came to Santa Rosa and interviewed one of the Indians there. He was supposed to have one of these deeds. I had a very serious talk with him and told him that we heard he had some papers there that had been signed by some Indians many years ago; that we wanted to see them. After much persuasion he showed us some papers which were printed advertisements for overalls. In any of my conversations or inquiries regarding the subject of this suit and of these deeds and powers of attorney, I have never found any Indian who admitted that he had heard of it until the government men brought the news.

Cross-examination by Mr. Reid:

My present occupation is stockman for the Papago Reservation. Mr. McCormick is my boss. I live here at the agency and draw a salary of \$95.00 a month; have my house, water and fuel furnished.

I have been working for the Government here off and on for the last 15 years; for 5 years I have been with them permanently. Mr. Martin was the agent preceding Mr. McCormick—Mr. McQuigg preceded him—Mr. Thackeray was never agent here—he was supervisor, I believe. When I went with Mr. Thackeray on this trip he was agent at Sacaton.

The name Santa Rosa is applied to the bunch of villages close to Kiacheemuck all up and down the Santa Rosa valley on either side of Kiacheemuck, which is known to the Mexican people as Santa Rosa.

456 Q. Do not the people of each village or district respect the people of the adjoining villages or district relative to lands and territory, so that as a rule, they keep their cattle and horses near their own village and use the land around their own villages? A. No, except their cultivated fields.

Q. And in the round-ups, you do have these round-ups, don't you? A. Yes.

Q. You take the cattle back to the different villages where they belong when you have these round-ups? A. Yes.

Q. Is it not a fact that when they gather the fruit from the cactus the different villages respect the territorial limits of their own districts and other districts? A. No, sir.

Q. Is it not a fact that the people of one village or district very seldom change their place of habitation to another village except a young man will marry a wife of another village and bring her to his village? A. That is not always the custom.

Q. Generally the men stay in their own village or district and do not locate with another village or district? A. They very seldom do that—they do it once in a while but not generally.

Q. The Papago people do use the term "Santa Rosa" when they speak to the Mexicans and Americans do they not? A. Yes, sir.

Q. By using that term they refer to a group of villages or a bunch of villages? A. Yes, sir.

Q. And that group or bunch runs some north and some south? A. The ones closest."

Back of 30 years my recollection is not very definite and I do not undertake to testify as to the customs of the people back of that time. I was in school about 10 years and home about 4 months of the year. At that time we lived at Vamori south of here 16 or 18 miles. When the government sent the men to look after the Indian people it did not break up their ancient customs to a considerable extent. It is naturally a fact that when the Government

457 agent was established, he became the head man of all the villages instead of some Indian who had authority to act as head man, and at the present time, and since, the agent has been here, the Indians have not elected any head man of all the villages. I have never heard that before the government came in they had a head chief of all the villages who acted about as the government acts for them. I have heard that Jose Maria Ochoa was chief at Vinumkirk, but I never heard that he was head chief of all the

Indians. When the Indians leave their villages or summer villages and go to the mountains on account of water they return to the same homes in the valleys when the water comes back and when they go again to the mountains they go to the same places there. They have two homes, one in the mountains and one in the valley and these winter villages are from 10 to 20 miles from their summer villages. The distance varies in different sections of the country. The Papagos claim all the land between and surrounding each of their summer and winter villages and they claim all the land between Baboquivari Mountains on the east and the Ajo Mountains on the west and from the Mexican boundary on the south up to the Southern Pacific Railroad on the north. There were people living outside of this boundary and beyond in the early days I think. It was largely on account of the white people coming in and the drifting away of game that caused their drawing in between the lines I mentioned. I have heard it said that there were Papagos at Tucson but that was before my time. I never heard the Papagos call themselves Pueblos. I never heard them call themselves village Indians. A Papago does not know what the word "village" means—they do not use the town nor community but they do have a word in the Papago language that implies or means community, town or village and they use the Indian term for that. Quite a number of them understand some Spanish and I understand that the word "pueblo" means town or village. The cultivated

458 fields of the families remain in the family from one generation to another unless the family decides to give it up. Some of these fields have been in the same family for many many years, back further than any one remembers. This country is known as a desert country and some years it has very little rain and some years there is not sufficient area for the live stock that we have and some of the stock dies of starvation and from lack of water and we need all the land that has been designated in the boundaries that I mentioned for the preservation of our stock and the cultivation of our fields, and as far back as I can remember the Indians have always claimed all of this land and have resisted the white man coming in and occupying any of it. In the early days, and as far back as I can remember, when the white people attempted to encroach upon these lands the Indians would attempt to drive them off. The Indians claimed to own all those lands between these boundaries and they claim to own them now and so far as I am able to assert for myself and others, it is their desire to own all the land and keep it forever, between the boundaries I have mentioned and to own it in such a manner that it cannot be taken away from them. I said it was about 1910 when I first heard of any white people claiming any part of this land. At the meeting held in 1918 the people were told that there were certain white people claiming part of their land.

"Q. And were they told that this suit was to protect the Indians in their ownership and to establish their rights in this land?
A. No."

To the last question defendant objected on the ground incompetent, irrelevant, and immaterial; objection overruled; exception noted.

They were asked if they knew anything about this suit. I interpreted and they were told that some white men said that the Indians had authorized them to bring a law suit about land and were asked if they knew anything about it—they said, "No". It was stated that a certain man named Hunter many years ago had a half
459 interest in certain sections of land and these people were bringing up the suit to take this land that Hunter owned—that is, to take that half interest—that is what was told my people. The people believed that it was their land at that time and they did not want Mr. Hunter to take it. I believe at that time it had already been set aside by the Papagos themselves. They asked the government to make it a reservation—some of the Papago boys got together and wrote a special letter to Washington—some of the other people wrote, too, not chiefs only. The head men of the village had a meeting and authorized them to write it. They did not have any of the chiefs of the village sign the letter, they sent in a petition with a whole lot of names signed to it—I cannot tell who they were—all the people were consulted and all the people and chiefs acquiesced and agreed to it. The Indians themselves talked about the reservation first—I don't know how it came about, but the petition was made. Important affairs of the village are determined upon by a meeting of the people.

"Q. They instruct their captains what to do? A. Not usually; if it pertains to the whole village they agree to it.

Q. For example, like agreeing to a petition, such as you have mentioned here, does the captain, in obedience to the will of his people, sign the petition or write a letter? A. No, sir.

Q. Who does do it? A. They never had anything like that, they just agree upon it.

Q. What does the governor do? A. Well, the captain usually has not much power, his powers are very limited.

Q. What are his powers? A. He is the prosecuting attorney, and Justice of the Peace—that is about all, I think.

Q. What person does that for all the people, the people themselves? A. The people themselves; they don't have any one
460 person, not as you say, they don't have any one person in that way.

Q. You don't remember anything about how the right of way for the railroad was transferred, do you, to the railroad company? A. No.

Q. Or the right of way for any public roads, was there ever any transfer at any time by the Indians? A. No.

Q. You have no officer or organization of your village other than the captain, have you? A. Well, we have what they call the Governor of the village."

When you talk about a captain you make me think of the Army—the people of the village have no officers besides the Governor and

he is the only person to hold office either by heredity or chosen by the people. The Governor was the prosecuting attorney, the judge and the executioner, too.

“Q. And what he did he did in the name of all the people, they would back him up if he punished someone, then he would have no one to appeal to? A. No, sir.

Q. And the Indians obeyed their Governor? A. Usually they obeyed him.

Q. If a person or family, who claimed the right to a certain field, was disturbed in that right or possession by another Papago, how would that controversy or contention be settled? A. They would have to go to the Governor of the village to help them out on that.

Q. He would hear both sides of the case, statements from both sides, and decide? A. Yes, sir.

Q. And they respected that decision? A. Yes, sir.”

I said there was a place called Quitac that was formerly occupied but has been deserted, it is southwest of Vinumkirk; some went to Big Fields some to Vinumkirk. It is unusual for them to abandon any village. In this case they migrated only a mile or so—
461 their cattle roamed the same pastures—there are no fields there now. They have fixed fields that they hold from year to year and generation to generation, but no fixed pastures. The reason they have no fixed pastures is that they have no fences and the stock just wanders on the range until the round-ups and then they are brought back to their owners. Various owners of cattle brand them. I said that the Papagos never paid any taxes on their lands except some that owned lands in Tucson and such as that. In the meeting we had here in April 20, 1918, nearly all the governors of the reservation were here. I don't remember any village that did not have its governor at the meeting. I think there were 50 Indians present, more or less, who represented the people of this Papago country and they appointed a committee. I don't remember who the Committee Members were. Mr. McCormick did not make up the names, they were chosen by the people—no one particularly acted as spokesman—all the people who were sent as delegates from the different villages acted. I was present there and acted as interpreter. The way the committee was appointed they asked them “Do you want to be on that committee?” and then they would talk some and then say “This man and this man and this man.” I don't remember how many were on the committee, or if I was a member. The committee went among their own villages and asked the people if they knew anything about this suit. I did not go along with any of them and do not know what they told the people. They did not find anybody who knew about this suit—I never heard they found anyone. It was before this meeting that we found a man who produced a Hunter contract which turned out to be the overall advertisement. He was at that meeting. He showed us the advertisement again and said it was the first he knew of it. He said nothing about the meeting held at San Xavier or Tucson in 1880 and he did not say the advertisement had anything

to do with those meetings. He did not say that he was at a
462 meeting in Tucson in 1880 where they signed papers and
did not connect the advertisement with any such meeting.
He thought a good deal of it, he had it wrapped up and sewed where
it was torn. This man who held the overall advertisement is named
Jose Pablo—he is still living at Achi and is about 60 years old.

“Q. The Jose Pablo that you mention as having the printed over-
all advertisement was not from Santa Rosa? A. Yes, sir, from Achi.

Q. That is one of the Santa Rosa villages? A. Yes, sir.”

I could not give you approximately the number of people in
each of these Santa Rosa villages nor the number of houses. I
would rather not give the approximate number. Some villages are
north of the Santa Rosa group and some south. One Papago can-
not write a letter to another—there is no written language. When
I spell a Papago name, or write it, I take it from this map. I think
if I would write it down on one sheet and Mr. Norris, a Papago,
who can read and write, writes it down on another sheet of paper,
I think it would be spelled pretty near the same way.

“Q. I think I will ask you to write a few names of villages down
and then we will ask Mr. Norris when he takes the witness stand to
write the same names and see whether you spell them alike, do you
think you will? A. I don't want to do that.”

There is no Tecolote district—there is a Sonoita village. It is
not in either of the 3 districts I mentioned. Some of the villages I
have testified about are outside of Pima County, Ariz., I believe north
in Pinal County. I have testified about no villages in Maricopa
County but there are Papago villages there. The reservation I
testified about is in Pima and Pinal Counties and a little in Maricopa
County. The Indians do not keep a record of important affairs of
the village on a record stick.

“Q. You never heard that there is one old man here who keeps
a stick? A. But he is not an authority on it.

463 Q. Did you ever see the stick? A. Yes, sir.

Q. Describe it? A. Originally it was a piece of iron wood,
his house burned up and this stick was burned up and he made
another out of sahuaro ribs and he made notches on it and that is
the reason why I think he is not authority on it because the original
was burned up.

Q. What is his name? A. We call him Pisa.

Q. Where is he? A. If he is living he is around Tucson.”

The community called Silynarki, by the Indians means Hanging
Saddle. Pisa did not live at Hanging Saddle and did not keep
the stick there. When I saw it he was at Vavakerka (witness spells
word). Witness goes to map where the word is spelled Babo-
querque) Mr. Fraser: “It should be noted that *b* and *v* are con-
vertible sounds in Spanish”. On the trip I mentioned that I made
with Mr. Thackeray some years ago, we visited Achi to get that paper
this man was supposed to have. I also went around with Mr. Bowie
taking affidavits of people here. Everyone signed that we asked
about it—we had none prepared but we talked with the people—
we put down just what they said. I suppose it was afterward reduced

to typewriting— I don't remember if we had a typewriter along. Mr. Bowie had a typewriter on one of the trips. I think Mr. Bowie would write down what I interpreted. When I signed my affidavit the notary public and Mr. and Mrs. Bowie were present.

Redirect examination by Mr. Fraser:

The cultivated fields of the Papagos are around their valley villages—generally, no fields in the mountain places—When I testified that the Papagos claim the land around their summer and winter villages, I meant that the different families claim the land they cultivate. No village claims the land. Stock can range about 8 miles from water. This man Jose Pablo from Achi did not know anything about this suit or the deeds supposed to be given
464 in 1880. The fields of the Papagos occupy a very small portion of the whole Papago country. The range country is claimed by the whole Papago tribe.

Pursuant to the first stipulation herein referred to the deposition of **Alvino Geronimo** was duly taken on behalf of defendants, through Hugh Norris, Papago interpreter, at Sells, Ariz., Jan. 31, 1922, which was introduced and contained evidence as follows:

Direct examination by Mr. Fraser:

Alvino Geronimo is my name I am 80 years old. I live at Big Fields, about 7 miles from here, sometimes and sometimes I live at Nolic. I am a chief for about 15 years—I am full blood Papago. I heard about this suit first at the time they had a meeting here. A lot of people were here—they were from most all the villages. I don't remember who spoke. Supt. McCormick was not there. They told us especially about this law suit they had—they asked the Indians as to their knowledge of the suit and they answered they do not know anything about it at all. I asked other Papagos since then, especially two men from my village older than myself, who said they had not heard a thing about it before. At the meeting something was said about some deeds given years ago by Con Quien and other chiefs to a man named Hunter. None of the Indians at the meeting said they had heard anything about that. When they talked of the deeds at the meeting they did not bring up the question whether at the time that the deeds were given, Con Quien and the other chiefs gave powers of attorney to Hunter to bring a suit. Nothing was said about that. I don't remember anything else that took place at the meeting. There was a committee appointed but they did not find out anything about this suit. According to Papago custom as far back as I can remember, when anybody clears up a piece of land he owns it himself. It is their law and custom that any Papago can settle on any field not occupied
by another.

465 "Q. Do they have to get anyone's permisiosn to do that?
A. Sometimes, if a man has a field close by he usually goes

and asks him if it will be all right for him to come there and make a field.

Q. Generally, does he have to ask the chief or anyone except his neighbor? A. That I do not know. But they used to go to the chief or to the Governor."

Forty years ago all villages had their chief—they were chosen by the villages coming together and deciding on which would be chief, and if they all agreed, whoever was chosen would become chief. It was not usually the son who succeeded him, sometimes some other man was chosen. It was that way at first. My father took Con Quien's place and I have taken my father's place—From that time to this day it has been that way. Forty years ago each village had a council; usually there were two or three men assistants to the chief—they were put there by the villagers, to become helpers to the chief. To decide on these assistants usually they just went and had a talk with the man if they thought he would become a good assistant to the chief; if he agreed, he became such. When anything came up of importance to the whole village he called his assistants and if he wanted to he would notify a chief from another village to come. Forty years ago a chief had no power to give away or sell the fields or land around his village without calling a council, nor could he give power to a white man to bring suit regarding the property of the Indians without calling a council. Asked whether I ever heard of a council being called to authorize the giving of these deeds or the bringing of this suit, I reply that no time forty years ago or before forty years there has been no papers mentioned.

Q. Did the Papagos recognize a difference between a chief and a head chief in the old days? A. It might have been that way because he used to call meetings for the other chiefs from the
466 different villages because he knew how to talk. * * *

Q. How did the Papagos choose a head chief? A. Of course, usually, being a good talker, he had some power and then the other chiefs believed that he should be the head.

Q. Was there any one man who was head chief over all the Papagos? A. The only thing I know, he used to send word out to whichever of the other villages he wanted and called the people together.

Q. If there was a head chief did he have more power over the land around a village than the chief of the village? A. Well, he thought that he had quite a good deal of power, probably he thought he knew more about it than the other chiefs and gave them advice.

Q. Did the Papago people themselves recognize that he had any power over their lands? A. The other Papagos from the other villages?

Q. Yes. A. I guess that is what they thought, for they usually came when he sent for them to come.

Q. That is not what I mean—did the head chief have any more power to sell or give away fields or land around a village? A. No, it was not that way, the chief claimed the land but he would not sell it.

Cross-examination by Mr. Reid:

I have seen the Southern Pacific Railroad and was a grown man when it was built. Asked what they told me about the suit I say they told that Con Quien sold some land. Of course there was nobody that ever gave power to anybody that would bring up anything the way you folks are talking about it. I don't know what a deed or power of attorney is.

At that meeting, which was called by these people here, I was told that some white people were trying to take away land from us and that is what they told all the people there when I was present.

That is what this committee that was appointed at that time
467 was told also. They went out and looked for the truth, but they never find out anything about it.

"Q. And you don't want your lands taken away from you, do you? A. That is what I strongly think—a good many of my people agree with me the same way—they don't want to give up any of their land.

Q. You don't want to give up your lands to the government or any one else, do you? A. The way I have been told, the way the government people have told me, this land all belongs to the government and it is up to the government to do what he deems best about the land.

Q. You are willing and your people are they, or not, willing that the government courts, the courts of the government, shall decide who owns this land? A. I don't think it is that way, I know my people, and I know myself that we don't want to give up any of our land.

Q. Your people, so far as you know, claim to have always owned this land in what is called the Papago country for many miles around here? A. Well, the people a long time ago did not think a case would ever come up this way and the people, of course, claim all this land to be their land.

Q. And that is what you want it to be, you want this to be the land of the Papago people? A. Yes, that is what I want, because we people here do not bother the government much.

Q. And you never want the government to let white people come in here and settle these lands which you now occupy? A. I have told you just what I say in my mind about that and, of course, I say this, too, we are willing to do whatever the government decides.

Q. When you mean the government you mean that part
468 of the government that decides questions of ownership, which is the courts? A. Well, I mean that I heard said there is a man who is above all the chief men of the country. I never heard Con Quien called Jose Maria Ochoa.

Q. He was head chief while he lived? A. Well, I suppose he was because I told you before what he did.

Q. Have you ever been head chief of all the villages? A. Well, I thought I was from the first, but things have changed.

Q. Since the Indian Agent has been in charge of the Papagos the agent takes the place of the head chief, does he not? A. Yes, it is

that way, whenever any Indians want to find out something, they come up to the agent.

Q. And the agent acts as head chief of all the Papagos in the villages? A. As far as I am concerned I consider him head chief, I don't know about the other chiefs.

Q. Whatever the Indian agent tells you and your people you must do, then you consider you must do that, is that true? A. Yes, and when the agent tells me to tell my people something, I go there and tell them and they do it.

Q. And anything the agent does for you and your people you accept that as being satisfactory and right, do you? A. Yes, we are satisfied with whatever he does.

Q. And many years ago, before you had an Indian agent from the government, you had a head chief to act for you, did you not?

Interpreter: "Many years ago?" he asks.

Q. Yes. A. Well, they usually listened to him.

Q. And you usually did what he told you to do, did you? A. Yes, there were some things we were not doing the right way, maybe, and we would come there and he would tell us how to do this and he would tell us how to do that and other times if anything
469 wrong came up, and sometimes we took his advice.

Q. You say that many years ago the villages had a head chief, that the captains of the villages would get together and choose a head chief? A. Yes, I testified to that, I said it that way—of course, sometimes, the supervisor usually had some that work under him.

Q. Did the head chief have a council, or advisors or assistants? A. I suppose that was the reason he sent word out to them to come in so they could counsel with him and give him advice.

Q. Were the captains of the different villages the council and officers of the head chief? A. Yes, if there was any thing of great importance to talk about, they came and, of course, if it was a small matter, he would settle it himself?

Q. When there was an important matter, he would have the captains come to advise him, would he? A. Yes, I have told you that he used to send out and call the people over from the other villages to come in and talk to him.

Q. The things that the head chief and the captains would do, that would be satisfactory to the people of the villages, would it not? A. Well, I suppose it was that way, if they decided on something that way and if the other villages liked it, it was all right with them."

The Papagos generally lived their lives in the villages in which they are born. I have been to San Xavier but I don't remember a time many years ago when Con Quien was chief and all the captains went to San Xavier.

Redirect examination by Mr. Fraser:

Forty years ago Con Quien lived at Quitac—he was chief of that village.

"Q. Outside of that village did he have any more power than any other chief? A. Con Quien?

470 Q. Yes. A. He thought he was chief.

Q. Had he the power to give orders to the other chiefs what to do, or could he only advise them? A. I guess he had power to order them because he gave them orders.

Q. Were they obliged to do what he said if they did not wish to? A. Well, they helped him, I suppose they did what they told him to."

Pursuant to the first stipulation herein referred to, the deposition of **Louis Blain** was duly taken on behalf of defendants, through Jose X. Pablo, interpreter, at Vamori, Papago Reservation, Feb. 1, 1922, and contained evidence as follows:

Louis Blain is my name. I live here at Vamori. I am 70 years old. I came here from Tecolote many years ago—it was then a large village—it is small now. The people scattered from there. Comoah was a large village in the early days and there is no one living there now. There were more people at Vinumkirk in the early days than now. I have fields that I own here—I took them up myself—it is a Papago law and custom that when fields are not occupied by others any Papago can take it up. Sometimes the water cuts up a field and they cannot farm it as they have done before, and they leave it and take up another. I never heard of this suit. I never heard of a meeting held at Sells in 1918, at which the subject of this suit was brought up before a meeting of Indians. I don't know anything about the deeds to Hunter 40 years ago. I knew Con Quien very well—I guess he was chief of Quitac village where he lived—he was chief of no other village. I don't think it is true that he was head chief of all the Papagos. The cultivated fields around a village belong to the different families, the different people that live in the village. If a head of a family dies his fields belong to any member of the family, if they want the field—this was, say, 40 years ago—then it was the custom of the chief of each

471 village to call a council of men to advise him if anything of importance came up that affected the whole village. If it was of great importance they also called the whole village together. I never heard or knew of a council being called anywhere in the Papago country about 40 years ago to discuss the question of whether they should give or sell a half interest in their land to this man Hunter. I was a grown man at that time and I surely would know. Forty years ago, according to Papago custom and law, I don't think it would be possible for a chief to give away or sell a half interest in the lands around a village without calling a council, nor would he have the power to authorize a white man to bring suit in court about the lands without calling a council.

Cross-examination by Mr. Reid:

The people left Tecolote because the Apaches had become peaceable, when they were on the war path it was necessary for the people

to be more collected—some moved to Vamori to be near the government school. The people of Comoah moved away gradually looking for something to eat. People generally stay in the same places all their lives. I have lived all my life in Tecolote and Vamori. I don't know what is meant by a law suit. I never heard of the meeting of the Indians at Sells in 1918—I never heard anyone talk about it, or anything about it. I never heard of a commission being appointed at that meeting for the purpose of making an investigation. If they had a meeting at Sells, consisting of 90 persons and the chiefs of most of the villages were there, whatever they spoke or talked about would be of some importance. I don't know anything about either meeting, the Hunter meeting or the Sells meeting. I know there was a man sent to the Sells meeting from my village—I don't know what they talked about—when he came back he talked about something else but he didn't talk about the land and didn't talk about a suit in court. Con Quien was not a great leader among my people—I guess he was acquainted with all the chiefs of the villages. I guess all the captains of the villages did what he told them to—they did not look up to him as their leader.

472 In the olden days all the captains got together on matters of importance. I used to see them go some place together. I don't know the name of the man who was head chief last but I used to hear that he lived up there. If a man died leaving a field it would belong to one man, not the whole people.

Redirect examination by Mr. Fraser:

The chief was the man who decided disputes between the Papagos of a village—he decided what was right and what was wrong between them. I know the government decides what is right and what is wrong in disputes between Americans. I said I didn't know anything about the Papagos giving any white men power to handle anything for them. I don't know anything about a council of the Papagos authorizing a white man to bring a suit regarding their lands before the American court or judge. The school has been at Vamori just a very few years.

Pursuant to the first stipulation herein referred to the deposition of **Nacho** was duly taken on behalf of defendants, through Hugh Norris, interpreter, at Cowlic, Papago Reservation, Feb 1, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Nacho is my name. I don't know how old I am. I remember when the railroad came to Tucson; I was grown then. I have lived in Cowlic 25 years—I have cultivated fields here. I cleared the land—my father was living at that time and he helped me—my children helped when I took it up—it is the custom to take up land that is not occupied by someone else. Tom is chief at Cowlic—he is leading man in this village.

"Q. Among the Papagos how is the chief chosen? A. Before, they just selected the best man in a village and got together and talked about him, then told him to be the chief and he became chief and later when he becomes chief they take him over to the agent and tell the agent that he is chief.

473 Q. How do they select the council, the leading men who assist the chief? A. They look around and select them by the people."

The fields around a village belong to each man individually, not to the village. In the old days a chief could not sell or give away any of the lands around a village. They could do nothing of the kind. In the old days the men of the village used to come every night together and nothing would happen that they did not know. I was present at the meeting at Sells, in 1918, at which the Papagos were consulting about this suit. Quite a few Indians were there—a good many of the villages were represented. One of the things I remember that was told the Indians by the government representatives was whether we knew that this land was sold by Francisco, if we ever heard anything about it. They asked if we ever heard about this suit. I don't remember that the government men read any papers at that time—they answered that they never heard of this before—they don't talk much about it. I do not know of any Indian who authorized or directed the white men to bring this suit. We all know it to be wrong for any one person to make agreements of any kind about this land. In the old days the Papagos never let anything go on without inquiring about it. They were afraid to do anything, else there be something wrong about it, so they all have to explain and it is impossible for one man to do about it unless the whole of them know about it. I knew Con Quien—he was chief at a place called Quitac (now Vinumkirk) and when he had any important case he sent word to all the chiefs to come and have a meeting and they would talk about the business they had on hand. I never heard anything about a meeting at Tucson in the early days to discuss this suit. Sometimes they called together to talk about the land here, but not about a suit. I don't know whether Con Quien was chief of all the Papagos at one time or not. He was chief of his own village.

474 Cross-examination by Mr. Reid:

"Q. When Con Quien had matters of importance that concerned all the people of the Papago country, then you say he would call captains of all the villages to the place where he lived and they would transact their business there, is that correct? A. Yes, that is true.

Q. And whatever Con Quien the captains did there the people would abide by it? A. Yes, in a way they will do what they agree."

Mr. Fraser:

"Q. Has any other chief beside Con Quien the power to call chiefs together? A. No, I don't know of any—I don't know of any chief that would call a meeting."

It would not be possible, according to Papago custom, for Con Quien, or any other chief, or all the chiefs together, to give or sell the land around the village.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Manuel** was duly taken on behalf of defendant, through Jose X. Pablo, interpreter, at Topowa village on reservation on Feb. 1, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Manuel is my name; I am 45 years old, and live at Topowa — I have lived close around here for many years and for 15 years I have been living right here in this place. I have fields next to that hill. A small field belonged to my father and I took up more land and made this big field of it—it is the custom to take up land whenever it is not occupied. When a man dies his children take his land. As far back as I can remember the Papagos never figured on selling any of their land or giving it away. My father never told me, and I never heard of Con Quien and many other Papago chiefs meeting at Tucson to give papers to a white man named Hunter, by which they gave or sold him a half interest in all their lands. If this had happened, it is a thing that

475 would have been talked about a great deal among the people.

It was the custom for the chiefs whenever anything came up affecting all the people of his village, to call a meeting of his people to discuss it. He would always call a council if there was anything of importance. As far back as I can remember I never heard of any council here or in any other village to discuss selling Papago land to white men. I remember a meeting at Sells 3 or 4 years ago when quite a number of Indians were called together from the other villages and were spoken to by government men—I was there. The Indians were asked if they knew anything about any land being sold or a suit in the white man's court brought in the name of the village of Santa Rosa. The Indians said they did not want any suit because they did not know anything about it.

Cross-examination by Mr. Reid:

They did not find out anything about it afterward—if they did they would have said something. At this meeting at Sells we were told that this suit was for the purpose of taking land away from the Indians or something to that effect and that is what the Indians understood by this suit, that they might lose some of their land by it. The captains would never act on important matters without first having a council meeting to talk it over. I have lived in this house 15 years—built it—it has two rooms—each room about 20 feet square built of adobe brick. It is just recently that adobe brick laying work has been done in this village. When I was a little boy they had grass houses. There were no adobe houses in those days. This house had 4 glass windows

and two doors, with a shingle roof. Beyond the fields in the village the lands are used in common by the people for grazing. I don't remember when the chiefs of all the Papago villages used to get together, but my father had told me that they used to gather altogether in some place—they don't do this in late years.

Pursuant to the first stipulation herein referred to the deposition of **Chico Bailey** was duly taken on behalf of defendants, 476 through Jose X. Pablo, interpreter, at Sells, Arizona, Feb. 2, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Chico Bailey is my name; I think I am 60 years old and live at Pissenemch, quite a long distance from here, the west side of the reservation. It is about 30 miles from here—I have lived there all my life and have fields there. The water spread over that country pretty well and I took up and cultivated the fields myself. If the fields are not occupied by another Papago, any Papago can take them up according to Papago custom.

"Q. Did you have to ask the consent of the village to take up the lands you now occupy? A. I tell them in this way I think of taking up that land and whenever I could I would take up that land there.

Q. Did you have to get anyone's permission or consent? A. No, I just simply told the other folks about it.

Q. When you say that the land around a village belongs to the village, do you mean the different fields all belong to different people, or all the fields together belong to all the village? A. At our village we agree this way—if anybody has a field and somebody else wants to, he can come and plant in that field if he wants to.

Q. Do the different people own different fields? A. Whenever a man has a place or a piece of land fenced in he usually claims it is his."

When a man dies his relatives take his field. I have my own house and manage my fields as I please—no one else has anything to say about it, no one else but my own people. I have a few head of cattle—they rove all around in all directions. According to Papago custom their cattle can range where they please, anywhere in the country. I remember when the railroad came to Tucson—then the Papagos had not just as many cattle as now—at 477 that time they were water poor and it was hard for them to get water. Also the Apaches made raids and drove off the cattle. My village has a chief now—I think he is chief of our village only. I think I am one of the village council. Forty years ago they also had a council. The chief did nothing alone. Whenever they wanted to select a chief the villagers would come together, decide upon a man and he became chief—when there was a chief appointed the council would be appointed in the same way. It was then the custom for the chief to call a council together and discuss important matters affecting the whole village. There was no talk

about the chief selling or giving away one half of the lands around the village. I never heard of a chief selling or giving away any part of the land around a village with or without a council.

"Q. In those old days could a chief give a white man power to go into the white man's court and bring a suit to represent the Indians without calling a council? A. No, it was not that way, there was no friendship between the whites and the people of long ago."

Forty years ago the houses were mostly built of grass, ocatillas and Sahuaro ribs. Not many years ago Papagos began building adobe houses. Tecolote was once a large village but now small. They moved away when the Apaches became peaceful—the railroad had not come to Tucson when they moved. I know nothing about a suit in the white man's court brought in the name of Santa Rosa to find out about the title to land around that village. I don't know anything about the papers said to be signed in 1880 by which Con Quien and a number of other chiefs sold or gave away a quantity of Papago land to a white man named Hunter. I was there at the meeting 3 or 4 years ago at which government men spoke about the titles to the Papago lands and about who owned them. The Indians came from all the villages—the gov-

478 ernment men told us that they understood there was a meeting in Tucson, that a certain white man said he would help the Papagos; that the Papagos had agreed to give him a half, or some of their lands in payment for his services. After explaining all this to us they asked us if there was anybody in the meeting that knew anything about it and the answer was that nobody knew anything about it, and the old men said they did not know anything about it. The men at the meeting tried to find out afterward if there was anything known about it. They asked the different people personally if they knew anything about it and no one knew. There was some men who went around to the different villages trying to find out about it—I think there were about 6 who went around. I tried to find out something about it in my neighborhood—I spoke principally to old men and the old women but I could not find out anything about it. The Indians always talk about those things over the Papago country and I never heard anything about this deal. I don't think there was any truth about the chiefs' meeting in Tucson and promising to give some of their land to Hunter because I have seen, myself, the first chiefs who had some authority from the white men. I knew the chiefs personally and they all died of old age and they never said anything about signing any deeds. I know nothing about giving power to Hunter in the white man's court about these lands. If it had happened the Papagos would have talked a good deal about it and I never heard anything about it as long as I lived.

"Q. Could chiefs meeting at Tucson give power to a white man to bring that suit without first holding a council and getting the opinion of the Papagos about it? A. That was the only way they managed their business. If there were even 3 or 4 they could not make any business settlement at all.

Q. Do you mean they could not make any business settlement at all without consulting the people? A. That is what I mean.

479 Q. Does any Papago village ever say that the fields on this side of some line belong to the people of our village and no people of any other village can own any of them? A. No village has ever said anything like that.

Q. Has any Papago village within your memory ever claimed any definite tract of land as against any other Papago village? A. No, there is never any thing like that.

Q. Did you know a Papago chief called Con Quien? A. Yes, I have seen him."

He was chief at the foot of the Quijotas. I don't know that he was chief of all the Papagos. Forty years ago I know of no case of unfriendliness between Papagos and Americans. There were no schools in the Papago country. They knew a little about the white man's laws. They might have heard about them, but they knew nothing much about the laws.

Cross-examination by Mr. Reid:

The people of Pissenemch where I live, claim to own all the land around and about that village because they have lived there many years. No one knows just how long they have lived there.

"Q. The people of Kerwo—they own all the land about their village? A. They claim the land the same as we. Pissenemch and Kerwo are about 14 miles apart.

Q. Do the people of your town own land half way to Kerwo? A. No. I don't think they take it that way—they look at it this way—they are Indians there at their village and we are Indians at our village and we all do the same and our stock ranges over all the land.

Q. But your village and their village own all the land between the villages do they? A. Yes, it is that way.

Q. And the same is true of Cababi, which is on the east of you, is it not? A. Yes, it is that way.

480 Q. Do you know where "Santa Rosa is? A. I know where it is.

Q. Do those Indians up there own any of the land down near your village? A. That I don't know."

The people of each village do not stay within a reasonable distance of their own village for the purpose of farming and grazing live stock because the stock can graze at will wherever they want to, there is no dispute, no one claims any certain grazing land. When we round our cattle up each year we bring them back near our own villages—We do not try in a general way to keep our stock as near our village as possible; the only reason for the round-up is we fix the crop of calves and then we let them go. We bring our cattle back during the round-up to the place near the village—we turn them loose any place—they are all around there at Cababi, at our place, or down at White Well. I don't know anything about

any deal of the Indians, making any contract with white men in any way whatever relative to the sale or the use of the land that belongs to the Papago. I am sure the Indians did not know how to make an agreement like that about any land. If the Indians up north near the railroad would make any deal about their land, we would talk a great deal about it and if the Indians east in the Papago country would make any deal concerning lands with white men that matter would be talked of all over the Papago country. We are naturally very much interested in our lands. As long as I remember I never heard of any deal like that. News of importance travels very quickly in the Papago country—if important enough, in one night they would know about it all over the villages. If anything concerning land at San Xavier should happen, they would soon find out about it. I am pretty well acquainted with Papagos in all the villages. I know Con Quien—he died while they were working there at the Quijotoa, about 18 years ago. He was not a great leader. The people all knew him. In the early days, when I was a boy, the Papago people did not have a head chief or captain over the other captains. I don't know of
 481 any head chief over all the people. In matters of importance the chief and his helpers would come and agree upon something and settle it—the chief would never act in important matters without the council consenting—he could not. I don't know about other villages—I know at our place he would not act without the approval of the council. When there was an application to build a mission church in our village recently the chief called the council together. A church was built in our village and after the council told him to, the chief gave permission to build the church. He had talked to the council about it and his people and he was ready for the applicant and whenever he came he says "all right." I own two separate fields in my village. I don't think it would be right to sell them without the consent of the council or chief. No Indian could do that. If a school was put at San Xavier in 1880, '82 or '83, I think it would be important—I don't know whether or not at that time there was a school there. In those days the Indians out here were not much for schools: they talked about it, but they did not give it much importance because they did not want to go to school. According to my mind there was nothing more important than land.

"Q. Do you people and the people out here believe that the Papago Indians own what is known as the Papago country? A. I believe this land belongs to the Papagos because nobody knows how long the Papagos have lived here—they have been born here and therefore they call this as theirs.

Q. And you want the Papagos to always own this land, do you not? A. Yes, I want this land to belong to the Papagos all the time.

Q. And all the Papagos feel that way about it, do they not? A. All, they feel that way.

Q. And you desire it to be so that the land can never be taken away

from the Papagos, do you not? A. I feel that I want it be that way always.

Q. And if there is any question as to whether you own
482 this land or not in court, you want the court to decide that the Papagos own this land and should always own it, do you not? A. I think that all the Papagos believe that the government is going to back them, always to hold this land—that is my belief and all the Papagos believe that strong.

Q. And if the matter is now in court to decide that question, you want the court to decide that the Papagos own the land, do you not? A. Yes, I believe that and I think all the people would feel that way."

Redirect examination:

If a chief attempted to sell the land and the grazing range around the village without the consent of the village council, the people would not feel themselves bound by what he did. We would think he was crazy. Each Indian owns the land individually around the village but the rule is not so strict about that any other Indian, if he wants to, can plant in another man's field. When I said on cross-examination that the people of Pissinemoh owned all the land around that village, I meant that the families own their fields individually. If a man come in to Pissenemeh and cultivated a field the crop would belong to him, or sometimes if he wants to, he can give the owner of the field part of the crop. In my testimony I spoke for my village but at the same time I have been around a good deal among the different villages and I know that it is practically the same all over.

Pursuant to the first stipulation herein referred to the deposition of **Victorano Chico** was duly taken on behalf of defendants, through Jose X. Pablo, interpreter, at Sells, Ariz., Feb. 3, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser.

Victorano Chico is my name; I am about 44 years old and live at Little Tucson. I was at the meeting at Sells about 4 years ago.

483 Quite a number of Indians were present from different villages on the reservation. The government men told the Indians there to investigate and see if they could find out anything about the question of land. They told them about the land at Santa Rosa—they asked all the Indians to investigate—the Indians suggested that they appoint some of them to go about and find out about this question. I was one of those so selected. I first interviewed one of the old men and he knew nothing about this land question—I asked another old man at Cababi—he also said he never heard of it. The Indians appointed this committee.

Cross-examination by Mr. Reid:

The first man I interviewed was Joaquin Ascension and the other was Victor—they are still living—they were not at the meeting

here—there were not many very old men at that meeting—about 4 very old men. I said this to Joaquin “do you remember anything about this land ever being sold, I have been hearing that sometime ago this land was sold and I want to know if you have heard anything about it?” And this old man said “we have lived here all our lives and we have heard anything about this at all and I believe if this land was ever sold, whoever was the chief that sold it certainly he would have something to show if he had ever sold the land, for instance, nice clothing or something nice that he had bought with the proceeds of what he had sold, of course, if it was ever sold we certainly would know something about it, but I never heard anything about it.” I asked him if he knew that a part of this land had been sold and he said he did not. I did not tell him what part because I did not know which part it was that was supposed to have been sold. I did not tell him much, as I did not know, myself, just how much had been sold. I asked him if he was present at Tucson at the meeting where it was supposed to be arranged and he knew nothing about that meeting. I did not explain to him when the meeting was supposed to have taken place. I said nothing about the time of the meeting. My conversation with Victor was 484 just the same—I did not ask either of these men if they knew or had ever heard of the suit in the white man's court brought in the name of the village of Santa Rosa. I have never talked to anyone else about this matter except these two Indians—I did not make any report, as I did not find out much.

Pursuant to the first stipulation herein referred to, the deposition of **Bonaventure Oblasser** was duly taken on behalf of defendants, at Sells, Arizona, Feb. 3, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Bonaventure Oblasser is my name; I am 37 years old. I am a Catholic missionary living on this reservation, doing work for the Catholic Church. I have been living in Gila and have since 1910. I have studied the Papago language—I can speak it fairly well—I can speak Spanish and am familiar with the whole of the reservation. I have travelled among the Papagos in Mexico and covered nearly all their villages. In my work and travels among them, I have studied their organization and habits. I am fairly familiar with the region known as the Santa Rosa valley and the Santa Rosa group of villages. I know the Papago name of each—the first is Kiacheemuck—you have been spelling it approximately correct; and Achi, Kivibo and Iloitak, I believe that covers the Santa Rosa villages. There is a village known as Achin (Akehin) it cannot be a Santa Rosa village—it is not close—it belongs to the Comohabi community. The village of Anegam is not a Santa Rosa village because the people are a different family or tribe.

“Q. Is the name Santa Rosa just applied to one of these villages?
A. Probably, but I believe it is applied to the group most frequently.

Q. Consisting of how many villages? A. Consisting of 4 or 5 smaller villages.

Q. Please tell about how far apart the villages in the Santa Rosa group are. A. These villages are in a circle centering on 485 where the government school is at the present time, approximately 2 miles.

Q. Do the Indians use the term "Santa Rosa" among themselves to name these villages? A. The Indians use the term to designate the villages but they use it more for an accommodation term of most any village in the valley.

Q. In general, what do they mean by Santa Rosa valley? A. It is a long valley commencing at Table Top Peak and running down to the Quijotoa Mountains.

Q. How many miles is that? A. Approximately 50 miles, that is the whole valley in which Santa Rosa is."

The valley is approximately 10 miles wide. In common usage, the word "pueblo" is not given to Indian villages—the word "Kuchin" is generally used to designate Indian villages in this part of the country. I am speaking of my experience in Mexico because my attention has been called by the Mexicans to the fact that I was using the word "rancherias" in speaking of their places. Father Kino's Memoir by Bolton uses the word "rancherias" in speaking of the Papago villages.

(Counsel hands witness copy of complaint in this suit and asks the question:)

"Q. Do you know of any place in the Santa Rosa valley called Kabitka? A. That is supposed to be Kavichk, the *b* being mistaken for *r* and the *t* being mistaken for *ch*—that is the mountain eastward from Santa Rosa."

Kavichk is a Papago word. The base of the Santa Rosa Mountain is approximately 6 miles—it is eastward from the Santa Rosa group of villages, about 6 miles.

"Q. The description in the complaint then requires one to run south 24 miles, more or less, to a point known as Okama or Okomo—do you know of such point? A. It is probably meant to be 486 "Unukam—the *n* and the *k* have been transposed."

That is the north Comobabi Mountain at present—it is approximately 16 miles south of the Santa Rosa Mountain. If I go 24 miles south from the Santa Rosa Mountain I would not be still in the Santa Rosa valley. This would take you across the south Comobabis. Unukam is a group, a pretty well defined group of peaks, about 8 miles square.

"Q. The description that runs 24 miles west to a place called Mescalero, do you know of any such place? A. I could not place Mescalero from my knowledge of the country.

Q. A witness for the plaintiff has identified it, or has testified that Mescalero was at or near Poso Blanco, or near the Sierra Blanca. Are those places 24 miles west of the north Comobabi Mountain? A. Yes, about that distance, Poso Blanco is 24 miles west of Unukam.

Q. The description then runs 30 miles north to Sierra Ca' eza—

the same witness identified that with what is known as Table Top or Table Mountain—about how far is that mountain from White Mountain? A. It is quite a long distance, north of White Mountain. It would come close to 50 miles."

(Witness corrects this after testimony is over and says 40 miles.)

Table Top Mountain covers a considerable area—it is a high mountain with a large base, which is about 6 miles at least.

"Q. I show you a map bearing the name of the Dept. of the Interior, U. S. Indian Service, W. M. Reed, Chief Engineer, C. R. Oldberg, Supt. of Irrigation, bearing date 1915 and purporting to be a map of Southern Ariz., showing Indian villages and reservations. I will ask you whether you have examined this map with reference to the description of the tract just mentioned and whether you have attempted to outline the description on the map? A. I have, 487 I have worked at it pretty carefully.

Q. Have you delineated in green upon that map the outline of this tract using the monuments mentioned in the description in the complaint? A. I have followed the description according to the monuments given by the complaint.

Q. Does that make a tract 24 miles by 30 miles? A. No, it hardly does, it gives quite an irregular shaped tract, one end being much longer than 30 miles and the other being considerably shorter than 24 miles.

Q. The western boundary, according to that line that you have drawn, is about how long? A. A good deal over 30 miles long, approximately 50 miles. (Mileage corrected at end of testimony.)

Q. In calculating the distance, did you use the scale of miles given on the map? A. Yes, I used the township lines.

Q. So this tract marked in green represents, according to your measurements, the tract described in the complaint calculated as between the monuments therein mentioned? A. Yes, between the monuments mentioned, and assuming that Mescalero is at Poso Blanco and Table Top is Sierra Cabeza.

Q. Did you ever hear Table Top called Sierra Cabeza? A. I did not, no.

Q. There are in evidence in this case attached to the deposition of Santiago Ainsa a number of deeds, the description of one of which, called the Santa Rosa deed, is identical with the description in the complaint—have you examined copies furnished you by me of other deeds from various Papago chiefs to Robert F. Hunter, covering other tracts in the Santa Rosa valley? A. Yes, I have examined these and copies on record in Tucson.

Q. Did you find any of these tracts conflicting with the Santa Rosa tract as outlined on the map? A. I found several 488 tracts conflicting.

Q. Please give their names. A. The Anegam tract is conflicting.

Q. Is there any other tract that conflicts? A. The description of the Quajate tract also conflicts. How is that spelled in Spanish? A. Quajate.

Q. Does any other tract conflict? A. One tract duplicates—that is the Kiacheemuck tract.

Q. The deed to which you call my attention is from the captains of the village of Anaca and Poso Solado—are you able to identify those villages? A. Anaca is evidently Anegam and Poso Solado ought to be Poso Salado—in Papago Onigwafya.

Q. The description in that deed is as follows: Commencing at and inclusive of the Poso Salado in the Sierra Hui-moj, thence running south a distance of 18 miles, thence west a distance of 10 miles, thence north a distance of 18 miles to said Sierra, thence east along the Sierra, a distance of 10 miles to the point of beginning and containing 180 square miles, more or less, reference being made to the location of said villages and to Poso Salado. Now did you outline on the map as nearly as you can the tract there described? A. Yes, I have tried to outline it exactly.

Q. Did you meet any difficulties in finding the point of beginning? A. Point of beginning is not difficult to find, being at the location of the present Copperosity village.

Q. Which is the tract so outlined? A. The tract marked No. 4 in blue.

Q. Does that conflict with the Santa Rosa tract in the manner shown by the blue line with the tract outlined in green? A. It does—about half of the tract being in the Santa Rosa tract as outlined by plaintiff."

The No. 4 tract as outlined does not include the main village of Anegam. That village may be 5 miles off from the nearest point of the boundary. The next tract I found to conflict was 489 Quajate. The description of that found in the deed is as follows: 'Commencing at a point 9 miles due north of said village of Quajate, thence run due west a distance of 8 miles to a point known and designated as Poso Amargoso or Bitter Wells, and inclusive of said Wells, thence south a distance of 9 miles, thence east a distance of 4 miles to the summit of the Salmaro Mountain, thence northeast a distance of 6 miles to the point of beginning and containing 70 square miles, more or less.'

I attempted to find the boundaries but an exact following of the description would leave two inconsistencies and I corrected the error that I thought was in the description in order to get a description of the tract intended. I find first by running a line 9 miles due north of said village and then due west 8 miles, the end of this line would be nowhere near Bitter Wells. After trying from a point 9 miles due north of the village of Quajate, I ran a line to the village of Bitter Wells, almost or very nearly southwest—then I ran the line according to the directions, south a distance of 9 miles; then by trying to run a line east a distance of 4 miles, I could not possibly reach the summit of the next mountain called Salmaro in the deed but probably meant to be Sahuaro and thus reach the summit of the mountain called Hanamkam by the Indians—a species of cacti but not Sahuaro, and then from the summit of this mountain I ran a line northeast 6 miles to take in the village of Tahtmah-meli on the map and it was probably intended then to run to the point of be-

ginning, which was a distance a great deal more than 6 miles. If I had followed the description given in the deed alone I would have been able to trace a tract but I would have had to disregard some of the monuments. The tract I have just described is marked 5 on the map in blue and does not take in all the Quajate villages. It laps over the Santa Rosa tract quite a few miles in the manner shown on the map. The third tract I found to conflict with the Santa Rosa

tract was one of the later or Guittard tracts called the Kaka-
 490 chemouk tract, the description of which commences on the Santa Rosa Mountain, "north of said village," thence runs "west along the summit of said mountain," six miles; thence south 12 miles, etc. Santa Rosa Mountain is really east not north of Kakecheemouk and runs in a northerly direction and not east and west. It was not possible to run a line, according to the description given in that deed, and for that reason, I interpreted the intention of the person giving the description. Running the line in order to include the Santa Rosa village, which is the same as Kakacheemouk, if the descriptions were followed it would have left the village entirely out of the tract but I think I have followed the intention of the one who drafted the deed, following the line along the summit almost north and thence at right angles, etc., so as to include the Santa Rosa village which is the same as Kakacheemouk. This tract is marked on the map in red and overlaps the Santa Rosa tract almost entirely. The Bajio tract and the Cababi tract separate the mountain homes from the village homes of the same Indians, because quite a number of people having fields in Santa Rosa regularly have their mountain homes at Cababi in the Bajio tract. I have outlined the same on the map, following the monuments, more or less the distance given. This tract is marked by a green line, numbered one. This same situation exists in regard to the village of Akechin, which consists almost entirely of fields belonging to the people living at the mountain village of Comobabi. There is a separate deed covering Comobabi, one of the Guittard deeds, later on filed in the court house in Tucson. It is marked on the map in green, as No. 12. The Santa Rosa tract, the way it is outlined leaves out the mountain village for the people in that community, which is the village of Hanging Saddle (Silynarki) in the Vaca hill. By following the southern line exact of the Santa Rosa tract, as described it would leave out the entire valley villages of the Santa Rosa Indians at Sikuhimat.

491 Whereupon said map was received in evidence and marked Defendant's Exhibit 1-a for indentification.

(Here follows map marked page 492.)

Referring to this Santa Rosa group of villages, their fields extend as far south as Sikolhimat (or Sikuhimat), about 18 miles south of the day school. They are scattering fields—they are not continuous, that is the farthest south that the Santa Rosa people have fields. Around the Santa Rosa group you will find the fields close to the village on the south to Iloidek (meaning a little field) and

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them; when I testified to distances, for instance from Sierra Blanca to Table Top, I calculated the distance from measurements on the map, not from my own surveying. A projection or head in the mountain would be a Mo—it resembles a human head. The majority of the Village of Comobabi have fields and homes at Akchin—

494 Anegam is 3 or 4 miles north of this Santa Rosa school here—it is approximately a mile and a half from here to the first house at Anegam. The houses that we can see over northeast that are close at hand is practically this village here—they call it Kwivo, or Achi. Achi is the farther end of Kwivo. The next village northeast is practically about one with this, that is Santa Rosa village; Achi is the farthest. Beyond that there are no more houses—all Papago villages are pretty well scattered, compared with the villages in the middle states they are very much scattered, although they are pretty well defined—there is some distance between some of the houses. Small groups have a name for that group, like in this present instance, *they* is Achi. For instance, in the village of Kiachemuck where there are a number of groups, each group would have an Indian name used among the Indians, especially if they were separated. There would have to have names in order to serve in the place of names as we have for our streets—they would name them as we do our streets. Up at Cababi, one part claims one chief and another part adheres to another man for chief—it is the same down here at Santa Rosa, the chieftancy is very much disputed—for instance, Kanderone claims that he is head of the whole village, and whereas I have heard that parts of the village deny him to be chief—some other parts claim he is not their chief and they claim some other man as chief. They will hang together and recognize their man as chief. Kanderone is chief of the village right over the arroyo here.

“Q. But it is a fact, is it not, that under the present day organization, in the same village there may be a group of houses, or a part of the village that will have a separate and distinct chief, or a man who claims to be chief? A. No, not unless they form an opposition party—they recognize the head chief by a majority. You will find, too, that the authority of different chiefs differs—the stronger

495 his personal influence is, the stronger his hold on the people.

Q. If he has a strong character he will then, of course, assume and have greater authority? A. He will have more people adhering to him.” * * *

Q. What you have testified to now as to the organization of the villages is their present day organization, is it not? A. It is what I have observed and what I have heard occasionally because when I first came here the U. S. Government had not yet been organized out here and they were still adhering to their old custom pretty much.”

Redirect examination by Mr. Fraser:

By Santa Rosa I mean this aggregation of little villages here, starting with Iloitak, this little village here where the school is and the villages or houses across the arroyo and at Achi not including

Anegam, which is different, separate from this village and not at all related. The name Santa Rosa is applied to these villages by the Indians here when talking with outsiders. When I first became familiar with the Indians of this locality they used the name Santa Rosa for this place right around here, because I planned to put a school here before the government did. Among themselves they usually used their own words. Santa Rosa has a broad meaning when talking with outsiders—I have heard it applied to the whole country. For instance, at San Xavier, I asked a boy why he did not come to school and he replied that he had been to Santa Rosa, whereas he had only been as far as Coyote, and in talking more about the matter I found out that he called almost the whole northern desert Santa Rosa—they mean the general direction of the desert. In a sense, they wish to express that they went out to the desert and it would include almost anywhere on the desert—the desert is practically identified with the whole Papago reservation.

496 When the water gives out in the valleys, the villages are practically deserted. The line I have worked on the map as the western boundary of the Santa Rosa tract is the line the deed calls for if we accepted the Sierra Blanca and Table Mountain as the monuments. I have taken the census over the whole reservation including Santa Rosa and Anegam. We had to go to every house where we could find a Papago. There is no definite dividing line between any two of this Santa Rosa group of villages.

"Q. When you say that Kiachemuck and Achi are practically the same, or one, do you mean that the 2 villages are a composite whole? A. No, there are other little villages that could be brought into this group and I said they had no definite limits at all."

Indian names of the villages are often used to designate districts. The houses are in no definite order—some of the cactus rib and grass houses still exist in these Santa Rosa villages, although the majority of the people are turning to better houses. When I first came to the country the Santa Rosa groups were far behind the rest of the Papagos in progressiveness and civilization. There is no way of telling which is a group of houses and which is a separate village. If you wish to call it a village, do so, or if you wish, call it a group of houses. Some of the Indians will claim that Achi and Kiachemuck are separate villages but I don't consider them separate villages because they are separate people. I never found one definite chief of the Santa Rosa villages. When I first came several men claimed to be chief. I consulted all of them who had the right to decide when I wanted to build the school.

(Witness recalled February 3, 1922.)

Examination by Mr. Fraser:

"Q. I desire to recall Father Oblasser, who desires to correct a statement made in his direct examination this morning.

497 Mr. Oblasser: taking that line from Poso Blanco peak up to the Table Top Mountain, I guessed the distance more from a general view from the township lines, and estimated it to be

them; when I testified to distances, for instance from Sierra Blanca to Table Top, I calculated the distance from measurements on the map, not from my own surveying. A projection or head in the mountain would be a Mo—it resembles a human head. The majority of the Village of Comobabi have fields and homes at Akchin—

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(Witness recalled February 3, 1922.)

Examination by Mr. Fraser:

"Q. I desire to recall Father Oblasser, who desires to correct a statement made in his direct examination this morning.

497 Mr. Oblasser: taking that line from Poso Blanco peak up to the Table Top Mountain, I guessed the distance more from a general view from the township lines, and estimated it to be

about 50 miles, but in justice to the plaintiff I must say that the distance is closer to 40 miles.

Q. The lines you are speaking of is the western boundary line of the Santa Rosa tract? A. Yes, it changes nothing in the contour of the tract as defined on the map."

(Witness recalled for further direct examination February 10, at Santa Rosa School.)

I am familiar with Table Top Mountain, which was yesterday said to be called in Spanish Cabeza, Jose Ignacio testified to a mountain called Schuk-mo, which was said to mean Black Head in Papago. That meaning is correct. The mountain lies west of Quijotoa. It is the highest peak in the Vekols. Sierra Cabeza (described in the complaint as the northwest corner of the Santa Rosa tract), would mean Head Range. Table Top is an isolated mountain, not a range. I am familiar with its appearance—it has a very broad base. I have been able to detect in that mountain no resemblance to head of any kind. I am familiar with the mountain spoken of as Black Head—it has the appearance of a "knob" protruding from the Vekol range quite distinctly like a head. The Vekol range is what could be called in Spanish a Sierra. The Black Head mountain lies about 10 miles in a southerly direction from Table Top. This Sierra is a conspicuous mountain as seen from Kiacheemuck. The "knob" is visible from here but not so visible as from the village of Quijotoa. Table Top constitutes no part of a Sierra.

Cross-examination:

"Sierra" means "range," and the Spanish people do not use the word "sierra" unless the mountain has the appearance of a range, that is, that it is very long. Table Mountain stands alone, is isolated. It is a fact that on the topographical map, (Defendants' Exhibit "1") it shows that there are 3 other peaks distinctly marked, 2 of which are approximately the same height as the Table Top mountain but the three elevations form to make one large truncated peak, as the corners for the leveled top, and these 3 peaks form the Table Top, which is between 2 and 3 miles across the top. The base descends very gradually all around and canyons slope down towards the Santa Cruz wash. I would judge it not more than 10 miles at the base—it has two visible peaks from here—it may have practically 4 peaks of the same elevation—I have never been on top. I dispute the word "nomadic" with anyone applying it to Indians. I suppose from a superficial view, from this vicinity, Table Top Mountain appears to be at the head of a range of mountains, but the Indians have more substantial knowledge of it. It might appear as the very head of a range of mountains to the superficial observer, but no one would say that knowing it. The next big mountain north and west, or due north of it, is more than 12 miles north of Table Top Mountain. There is a series of mountains that look like a continuous chain, with considerable depressions between the peaks and high places

from the Quijotoas to Table Top, which stands out clear and can be seen from the Santa Rosa villages.

"Q. Will you designate on this map with the letter *H* that mountain mentioned by the witness who has just preceded you, mark it with indelible pencil?"

(Witness designates letter *H* with indelible pencil on Defendants' Exhibit 1, about 10 miles south from the north end of the west line of the tract, identified and marked in green by him as the so-called Santa Rosa tract. Last witness referred to was Jose Ignacio.)

That is a well known peak—the Spanish interpretation of the Indina name would be Cabeza Prieta, or the English equivalent of it "Black Head." Table Top is quite conspicuous from here, but not more so than the Vekol range, south of it. There is nothing about Table Top that would suggest a Sierra.

Defendants' Exhibit 1 is a map containing a description of all the land referred to and the lines are drawn in colors by the witness and witnesses' lines overlap other lines of different tracts as described by the evidence of the witness.

Pursuant to the first stipulation herein referred to, the deposition of **Juan Marcos** was duly taken on behalf of defendants, through Jose X. Pablo, interpreter, at Sells, Ariz., Feb. 3, 1922 and contained evidence as follows:

Direct examination by Mr. Fraser:

Juan Marcos is my name; I live at Little Tucson, and have lived there all my life. I was at the meeting here when government people talked to Indians about a suit in the white man's court. brought in the name of Santa Rosa people about Indians lands—quite a crowd of Indians were present. No Indian at the meeting said he knew anything about this land question. I don't remember much that I heard there. I never heard any talk about this matter after the meeting was over—no one said anything to me about it after the meeting and I did not hear any other Papagos say anything about it—never heard them talk in my village about it afterwards, except some of the young men. I remem'ed about the time the railroad came to Tucson. I remember Con Quien—he was not chief of our village and our people did not consider him head chief of all the Papagos. There used to be some men who would go to our chief and assist him in deciding questions of the village. I never heard of our chief, or any chief, selling or giving away to a white man any part of the land around our village and the chief never said anything to me about selling any land—I don't think that any part of it was ever sold. He could not sell with or without the consent of the council any land. According to Papago custom in those days the son usually takes over the fields and cultivates them. The fields around the village belong to the different families. The cattle roam at will, mixed with the cattle of other villages, all around the country. When the Papagos gather the sahuaro fruit,—the groves

500 do not belong to any one village. In the old days they had grass houses in which they slept. About 30 years ago adobe houses began to spring up here and there.

Cross-examination by Mr. Reid:

To build a grass house they put a pole in the middle of the house, use limber wood and make it come up to the center and put grass on top and cover with dirt—to put the mud on we had a shovel made of wood, we had a basket and one person would be on the ground gathering the dirt and hand it to the men on top to scatter and then tramp it down; the sides were made of grass with dirt around the foot to hold it together. Those were the only kind of houses we had in the early days. We slept as well in them as we do in adobe houses and we thought they were good houses in those days for this kind of a country. They would last 5 or 10 years but we could rebuild or mend them. Sometimes we would rebuild it at another place. We used ocatilla to hold and bind the grass together.—It is hard and lasts pretty long. I don't know the year I was born because the Indians don't keep dates like the others. The meeting we had here 4 years ago I think, was very important. It was the first time that the agent had ever called all the villages into a meeting that I know of, and after the meeting, no one said anything to me about it—no one said anything to me about the meeting that was held in Tucson in 1880 that I remember of. No one ever, in my presence, talked to anyone else about either of these meetings—I have never heard anything more about them. Nowadays when anything happens of importance the chief gathers a few men and they talk about the matter. In old days it was not that way; at our village we did not have a chief. Some of the men would come together and decide on the question—I don't know how it was in other villages beside ours; am speaking of my village only.

“Q. If you had \$60 and gave Jose Pablo \$4 how many dollars would you have left? Are you able to answer that? A. No,
501 I am not able to answer it.”

I have 3 grandchildren, the oldest about 8 years old. All grass houses we had in those days were as I have described.

Whereupon the picture of a small grass house was introduced in evidence as Defendants' Exhi' it 2-a identified as photograph No. 508 in Bowie's report, Vol. 3, page 503, which exhibit is correctly described in the testimony of the witness and is the size of a postal card.

The grass houses have no windows. When I first remember it was the custom of the Papagos to burn down a house when anyone died in it. I think I was about 25 when I was married. Papago men are pretty well grown, some past 30 when they marry. When I was a boy I do not remember ever going to Tucson. When they were working on the railroad at Tucson we never went to see them work because they told us it was dangerous. I don't remember at any time that the Papagos sold some land at San Xavier.

Pursuant to the first stipulation herein referred to the deposition of **T. F. McCormick** was duly taken on behalf of defendants, at Sells, Ariz., Feb. 3, 1922, and contained evidence as follows:

T. F. McCormick is my name; am 49 years old; reside at Sells, Ariz., am Supt. of the Papago Indian Reservation and have been nearly 5 years; it was then I first came to the Papago country, in 1903. I was at Cheyenne-Arapahoe agency in Oklahoma; there until 1907, and then to Rosebud Reservation, South Dakota, and there until 1910, and then to Pechanga Reservation, Calif., and in 1914 to Pala Reservation, and in 1917 took charge here. I was agent at Pechanga, Pala, Calif., and here. Mr. Sells first mentioned this suit to me when I first took charge here. I then took steps to discover the facts or knowledge of the Indians regarding this suit. The Indian office sent out a special supervisor, William Bowie, to make an investigation, and I called a meeting here at Sells in 1918 to ascertain from the Papagos if they had ever heard
502 anything about this suit—there were between 90 and 100 Indians present. The white men present were Mr. Bowie, Mr. Thackeray and myself—all three of us presided at the meeting.

"Q. State as fully as you can what was said to the Indians. A. That we wanted to find out if they had known of or had ever heard of any papers being signed deeding part of this reservation to any white men, and after it was interpreted to them we allowed them to talk among themselves and then we asked them if they had heard anything about it before, or knew anything about it.

Q. You said you tried to find out whether any deeds had been made to white men? A. Yes, sir.

Q. Was any account given as to what deeds were thought to have been made, or where, and when they were made? A. Yes, they all understood that the deeds were supposed to have been given, or made in Tucson in 1880 to a man named Col. Hunter."

We told them that the suit was brought in the courts and asked if the Indians were aware of the fact that they were to pay for the suit by giving up half of this land mentioned in the different tracts in the deeds. The response of the Indians to these speeches was that they knew absolutely nothing about it, never heard of it. We had Hugh Norris and Jose X. Pablo, interpreters, at the meeting—both acted at different times. The Indians took time to deliberate, talk among themselves, right there at the meeting and we could not find out that anyone there knew anything about it, or had ever heard of it. Men from practically all parts of the reservation were present. As

I sent out the word I took particular pains that all parts of
503 the reservation should be notified. The majority of men there were middle aged and old, very few English speaking men among them. After this a committee was appointed by the Indians to canvass different parts of the reservation for information. They were given a time to report back to Mr. Bowie and myself as to what they had found. There were 6 special men on the committee supposed to report but all present were requested to act.

All the committee reported here the same day, about the same time—they reported that they had inquired around through the different villages and could find no information concerning the deeds whatever. The committee came from scattered villages—one from San Xavier; one from Little Tucson; one from Comolie and one from near Silver Bell. By refreshing my memory from this list one came from Topowa and one from San Pedro. I was never at any other called meeting about this matter but have had them here in the office and talked the matter over along with their other business. Whenever they came I asked them about it. I have made inquiry continuously since 1918 of the older men at all points of the reservation and never could get any track of it. I am not competent to testify regarding tribal organization of Papagos, but today each village has their own chief and any matter that comes up of any importance the chief will call the people together and they will talk it over. If it is some information that I want they will come and somebody will come with them and tell what happened at the meeting. For example, the chief over at Little Tucson lost his mind here 3 or 4 months ago. This man Francisco, Juan Marcos and one other man, as a committee from the village, came over to see me about it. Francisco was what you might call the councilman to assist the chief and the old chief was no longer able to transact any business—they decided that this man Francisco should take his place and they came over as a committee to report to me what they wanted to do. Nowadays the Papagos have no head chief over all. Asked whether chief or council has the final say if any difference of opinion arises, I give this example: The Government was putting in a deep well at Big Fields—the chief was in favor of having the well, the well-rig was moved to a site suitable for a well but some of the people of the village objected. A meeting was held and Mr. Brett, representing the Indian Irrigation Service, and myself were present and in spite of the fact that the chief and some of the others wanted the well, the majority were not in favor of it and the well was not put in there at that time—the well driller had to move his machinery away.

Cross-examination by Mr. Reid:

The reason they gave for not wanting the well was they did not want any white people coming around. They did not want any school around there and if they had a well, they would next have a school. These Indians have been rather jealous of their possessions as against the white man and this is so toward the government, the matter of schools and wells, to a certain extent. I said if the captain and the people agree upon something of more or less importance, then they report that to me, if it is something I should know—that has been the custom ever since I have been here. The schools were opened here just as I arrived—the first teacher had just arrived at Vamori and at Santa Rosa. My explanation to the Indian people of this suit was that it was a suit in court which, if the Indians won, would result in their losing one half their land—that was my information at the time. That was the character of the suit, as I understood it, but I

tried in every way, shape and form, to find out if there was any other kind of paper signed by them regarding any of their land in this reservation. The Indians remember transactions very well. The Indians marry at the age of 25 and 30—many are 30 years old and single.

“Q. Did you give the Indians instructions not to talk to anybody present who came on the reservation inquiring about the
505 present suit, or the deeds we are referring to? A. No, sir.

Q. You did not tell Abram Pablo of Santa Rosa not to talk to anyone if they came to him but to bring them to you? A. Yes, sir, or to send them to me.

Q. And to do their talking in the presence of some government official—that was quite generally given to the Indians? A. Yes, sir, at the meeting we held here.

Q. Abram Pablo is an Indian policeman for the Service? A. Yes, sir.”

Redirect examination by Mr. Fraser:

“Q. What was the reason for the instructions you gave to Abram Pablo of Santa Rosa not to talk to people except in the presence of the government representatives? A. My experience with the Indians has been such that it is a very simple thing to get an Indian to sign a paper, because he can neither read nor write, and if a white man gets his confidence, he can get him to do anything. I knew that this suit was pending and I heard of a Mr. Brown making an offer of \$100.00 for each signature he could get on deeds similar to those deeds we are talking about and I wanted to warn the Indians, in case any other white grafters came around we would have a chance to keep the Indians from being robbed out of their land.”

On cross-examination I said that Flores of San Xavier, an Indian, signed a deed, as he thought to the stones and timber on his land, which turned out to be a deed to the fee title to some white men.

In making inquiries of the Papagos regarding the present suit I tried to learn if any Papago had ever authorized the bringing of the present suit and I never found a Papago that ever knew or heard a thing about the suit. While making these inquiries, I, at all times,
506 had an interpreter with me. The committee reported back

to me about 3 weeks after the meeting. I make the census of the Papago people from year to year—the last was June 30, 1921, which shows the total population of the Papagos in Pima County, not including Sacaton agency, 4,573. The number of villages is 47—we could not list each village under my jurisdiction because we confined the census to either the mountain homes or the valley homes and there are probably as many of each. There are about 100 villages under my jurisdiction. It requires a depth of 500 to 720 feet for a well, which can be used only for stock and domestic purposes. Under the Papago system they do well if we get one crop in every 5 years—the years that the crops fail, the Papagos subsist by

working out in the cotton fields and mining. According to Papago custom the farming lands around a village belong to the individuals. Outside the cultivated fields it is held in common by the whole tribe. A Papago village does not claim to own any definite tract of land as a village; there is no boundary line whatever to a village. I have ascertained that Papago custom is to move from place to place whenever they feel so inclined, provided they are not occupied by other Papagos. I cannot speak for Maricopa and Pinal Counties, which are outside of my jurisdiction, but there are Papago villages outside the reservation in Pima County. I have never heard the Papagos say whether or not they were consulted about the lines of the reservation before the reservation was made. I never heard the Indians say anything about the reduction of 520,000 acres made on executive order of Feb. 1, 1917. Whether the Papagos as a rule shift from one village to another depends on the water supply. Since the Government put in the deep wells the villages are becoming permanent villages. Before that the Indians remained in their own villages as long as water conditions would permit. The villages are located at the mouth of the arroyos, where it spreads. They build dikes around their fields and flood them with the waters from these
 507 arroyos—the charcos are built for stock watering and domestic supply where there is no well. Usually they dry up the latter part of June, then the Indians go into the mountains.

(Further examination Feb. 7, 1922, of Mr. McCormick by Mr. Fraser:)

In my official position, I have prepared statistics of the total number of Papago houses on the reservation, which shows 2,000—75 with wood floors. I have also prepared a statement of the acreage of the agricultural land, not irrigated, which is about 16,000 acres. Similarly, I have ascertained the grazing land to be about 2,703,514 acres. These figures exclude San Xavier, where there is 1,500 acres of agricultural and 35,000 acres of grazing land; also a stock census shows that the Papagos on the reservation own 17,000 cows and calves; 810 bulls; 1,075 steers; 9,785 horses and mares and they have about 40 ponds, 109 wells, 15 of which were sunk by the government—the others are usually wells in the mountains dug by the Indians. The rainfall for 1921 is 5.43 inches. For 5 years I have been familiar with the villages of the Santa Rosa valley, named Anegam, Kiacheemuck, Archi and Akchin. Yesterday, Feb. 6, I counted the number of houses in these respective villages—they are as follows: Anegam 100; Kiacheemuck 139; Achi 20; Akchin about 40. It is about 3 miles on the north to Kiacheemuck, Achi a trifle northeast of Kiacheemuck, about a mile and a half—Akchin is about 3 miles south from Kiacheemuck. There is difficulty in determining the approximate distance between these villages, depending on where you take your starting point from—the houses are widely scattered, some villages covering as much as 2 miles from one end to the other.

“Q. Is it possible to determine with any definiteness the boundaries of these villages? A. Yes.

Q. How do you determine it? A. By the space between them and the way they are grouped."

There are no marked boundary lines around any of these villages. In Anegam there are about 13 groups of houses, 5 houses in the first group, 5 in the second, 5 in the third, 4 in the fourth, 6 in the fifth, 3 in the sixth, then 2, 21, 24, 2, 14, and 8. The houses are not regularly arranged in any group. They are just built anywhere, in any shape or form. No streets in the village of Anegam and no plaza. The distances between the groups vary, some are about 250 yards apart and you can go on a quarter of a mile before you find another group, with open country mostly between them, once in a while a field. To make the 139 houses at Kiacheemuck they are grouped as follows: 7, 8, 4, 2, 32, 17, 26, 8, 3, 13, and 19—no streets, no definite order, no plaza.

"Q. Going back for the moment to Anegam, what is the approximate length of the country covered by that village from north to south and from east to west? A. About 2 miles long and about 1½ miles wide."

Kiacheemuck is about the same, with mostly open country and occasionally a field between the groups of houses. There is no regularity of arrangement at Achi, no streets, no plaza, and the condition is about the same. These same statements would apply to Akchin. In none of these villages is there a point that could be selected as the central point of the village outside of the government school at Santa Rosa or Kiacheemuck—the school was built in 1917. In my official duties I have contact with, and supervision over the Indians of all these villages. These in the north are not so progressive as the Indians in the southern part of the reservation, they are more opposed to the white man and they are opposed to schools; especially so is the Konderone band. I have talked to Konderone and he told me he was opposed to the schools—today there are about 6 here at this school—the largest number we have had here, I think, in 36. In practically all of the villages here are some of the older

type grass houses, especially so at Achi where they have more according to population than the other villages. There are quite a few cactus ribbed houses. These Indians would compare favorably with any Indians I have been with, especially so with the Cheyennes and Arapahoes, or the Sioux in South Dakota. The Sioux at Butte Creek and White River have houses in definite districts, the same as we define these at Santa Rosa district—they are built in villages scattered like these. The figures I have given include that part of the reservation over which I have jurisdiction in Pima County. The majority and ordinary run of the Papagos of today have practically no idea of the white man's laws—such matters as deeds, powers of attorney, and the like are not understood by them. I have been present at the examination of all the witnesses for the defendants held at Tucson and on the reservation since Jan. 25 of this year. With the exception of Maria M. de Berger, Oblasser and myself, all the witnesses for the defendants have been full blood Papago Indians.

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Recross-examination by Mr. Reid:

It has been estimated by a man, who I believe was an authority on it, that a steer in the ordinary year will require as high as 100 acres of grazing land—according to my own observation, I think that a little high but not very much. It depends on the year. The average rainfall here is between 10 and 12 inches, occurring in July and August, the heaviest in Dec. and Jan. The reason the Indians give opposition to schools is they just want to be left alone and to remain as they are—their fathers before them lived that way and got along all right and they want to live the same life that their fathers and grandfathers did. The Santa Rost Indians have always been friendly—Konderone is the only one who has ever expressed himself as being opposed to schools—he is not a chief—he has a little following of his own.

510 "Q. In the affidavit that was presented to the Government, was he described as a chief of the Santa Rosa village? A. He was at one time, I believe, prior to my coming here but he was arrested for opposing the draft, and after he was released and came home they put in a new chief, and Kenorone has been leader of his own little band ever since."

Ever since I have been here there were a few educated Papagos at all times who do understand the laws of the white man and the ways of the white man—there are quite a number of them at this time, young men, who have been away to school for 5 or 10 years. Take Hugh Norris, he is a man equal to the average white man in learning and intelligence—but he is an exception for Papagos for he was the first to go away to school—he is about 45 or somewhere around there. As far back as history goes these Papagos knew what it means to buy, sell, trade or barter in stock or horses, or to go to the store to buy their provisions but they will buy one thing at a time and pay for that, get their change and then buy another and go on in this manner—they will not order a bill of goods and settle the bill. The attitude of the Indian toward the white man has been growing better gradually for many years past. This is due to the fact that they realize the government has protected them in their rights and they appreciate it—prior to that time they were very jealous of them and especially of the white man, coming into this country—they were afraid they were going to be crowded out. The average grazing land necessary for a steer is estimated by the Washington Bureau covering this to be 40 to 50 acres. It differs here on the reservation in different localities—from 25 acres up.

Pursuant to the first stipulation herein referred to, the deposition of **John Wilson** was duly taken on behalf of defendants at Comolie, Papago Reservation, Feb. 4, 1922, and contained evidence as follows:

511 John Wilson is my name, educated at Carlisle. I live at Comolie in the southeastern end of the Papago Reservation. I was born here and have lived here ever since—this is my field—I took it up myself. The Papagos can take up any field

where it is not occupied, if they like it. If a Papago dies his fields go to his children.—Asked whether each Papago owns his own fields or whether the whole village owns all the land around it, I say they own their own fields. Cattle can range anywhere. Papagos never draw a line and say, "this side belongs to us and the land on the other side to some other village." These things have been true as far back as I can remember. Comolie has no chief now. When I first remember we had a chief named Pablo—in those days the chief had a council to advise him. The council was chief Pablo and the oldest men.

"Q. How did they choose the Council? A. They chose men from each village close to the chief's village.

Q. Do you mean that the chief was chief of more than one village? A. No, I mean that a chief can select a man from each village to hold the council.

Q. I don't think you quite understand me—suppose a man is chief over one village, we will say, does he have any of the people of that village to advise him when anything of importance comes up? A. Yes, sir.

Q. As far back as you can remember, according to Papago custom, could any chief sell or give away the lands around his village? A. No, sir, I never heard anything about that."

If he called a council he and the council could not do so. I never heard of a Papago selling any of his land. Years ago Papagos had fewer horses and cattle because they did not take care of them—I remember they used to have houses made of dirt and weeds and cactus ribs. I knew Con Quien—he was the chief at Quijotoa
512 village—I never heard that he was head chief of all the Papagos—all I know he was chief of that village. I was present at the meeting held at Sells a few years ago. There were many Indians from all the villages, from all over, there. The government told them they were trying to find out what chief sold the land—they asked the Indians if they knew—the Indians said they never heard anything about it. They told the Indians to find out if it is true or not, and asked them to find out about a suit in the white man's court about Indian lands. I was one of the Indians especially selected to make inquiry—I asked some of the village chiefs they knew nothing about it. At Big Fields—I asked the chief only—he knew nothing about it. I talked with other Indians later on but none knew of what happened in 1880.

Cross-examination by Mr. Reid:

I am 43 years old. The next village north is Topowa—we have no line between Topowa and this village. We have no certain distance which we call Comolie and after going further on it is known as Topowa country—we have nothing like that. I am acquainted with the lines of the reservation. I was a small boy when I remember Con Quien, and do not remember very well about him and the conditions 40 years ago.

"Q. But you have heard the older men say that many years ago

before you were born the Indians of this country had a definite organization and had a head chief over all of them? A. In the early days, yes.

Q. But they do not do that any more? A. No, they do not do that.

Q. They now go to the government or to the Indian agent? A. Yes, sir.

Q. And the Indians, so far as you know, and so far as the traditions have been handed down relate, have always claimed to own and occupy all this land that the Papago Indians now occupy? A. Yes, sir.

Q. And they claim to own not only what is on the reservation now but land that they occupy and still keep outside of "the
513 lines, is that true? A. Yes, that is true.

Q. And in the old days so far as you can remember, and so far as tradition tells you, when the head chief had anything of importance, he would gather the captains of the village together and talk it over? A. Yes, sir.

Q. Can you remember back any times when they did that? A. Yes, I can remember but I cannot tell what time."

I was away to school about 8 years. When I was 10 or 12 I went to Sacaton then to Tucson Mission school and from there I went to Grand Junction, Colo., and from there to Carlisle. So about 10 years of my life I was away from the reservation and before that I was most too small to know much about what the head men were doing but what I know has been handed down by tradition and what the older men have told me. No Indians would have ever sold their land and gone into Mexico—it is impossible to sell the lands because the Indians would not do it. The Indians believe that they have absolute ownership of all this land. They believe that, excepting the Government of the U. S., no one else can take this land away from them. They believe they have the same ownership, so far as title is concerned, as they had 40 years ago. At the Sells meeting they told the Indians that the suit was for the purpose of taking the lands away from the Indians, that some land had been sold to Hunter, and that is what the Indians understood, and that is what I understood as one of the committee. In the early days there were no houses better than the cactus rib grass house—some adobe houses, but not many; I remember a few being built when I was a small boy. I did not graduate at Carlisle but I was in the 9th grade, which is first year high school and I learned to be a farmer in the agricultural department and then came back to this village and have lived here ever since. I go away occasionally to work. I have just returned from Phenix and Mesa where I was working for
the Cotton Growers Assn., as sort of a boss or Supt., looking
514 after the Indian cotton pickers, working there—I keep accounts of the men that pick, sometimes I pick—I do not keep their time—I just travel among them, see if they are all right and interpret for them. I am familiar with the Papago villages in Sonora. A few of the Papagos from Sonora have come over to live on this side of the line. In the early days as far back as I can

remember, I never heard or knew of any one man being head chief of all the Papagos. When I came back from school I talked to the people here about what had been going on while I was away. I never heard anything at any time about any council at which the Papagos talked of selling their land.

"Q. Would that have been a thing that would seem of importance to the Papagos? A. No. "I don't know just how to say, but I know that the Indians would object very strongly if there was any talk of selling all their land or any part of it."

Pursuant to the first stipulation herein referred to the deposition of **Ramon Cachora** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at San Miguel, Papago Reservation, Feb. 4, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Ramon Cachora is my name; I believe I am 66 or 67 years old. I live here at San Miguel—I do not remember how long I have lived here, maybe 23 years—before that I lived at Tecolote. I moved up to the foot of the mountain and from there I moved to this village. If a man starts from Tecolote early in the morning with a wagon he will get here in the afternoon. I have cultivated fields here, I picked them out myself. It is the custom of the Papagos that a man can take any fields not occupied by others and when he does that, they are his fields. If a man dies his fields go to his children and if he has no children, to his relatives. The fields belong
515 individually, not to the village. Cattle roam everywhere—they are mixed up with all of the villages and that is why they have their round-ups to get them and bring them back. I remember when the railroad came to Tucson—I saw a lot of Chinamen working on it—I was grown up then. In those days Papagos had very few cattle and horses, not much live stock, for the Apaches came and stole them. Then our houses were built of ocatilla, none of adobe brick; the only one I remember was at Tecolote, as kind of protection from the Apaches. Then each village had a chief, each chief had a council to advise him. If anything important came up he would call the council to meet and talk about it before he did anything. In those days the Apaches were the most important. If they heard that they were coming they would call together and talk about where they were coming and where they were going. In those days, according to Papago custom, a chief had no power to sell or give away the land around a village—he could not if he called a council together, they could not do that, the whole country, all of the people would know about it before they would do anything like that. I never heard of any Papago or Papago village selling any of its land to anyone.

"Q. In those old days would a chief have the power to get a white man to go into the white man's court and speak for the Indians without calling a council? A. They would go to the agent and see him about it, he is the man to go into court for the Indians.

Q. Did you know a man named Miguel who was chief one time at Tecolote? A. Yes, I knew him.

Q. Was he chief at the time the railroad came to Tucson? A. Yes, he was chief then.

Q. There is a paper in court in this case that says that when Miguel was chief at Tecolote, he sold or gave away one half of the land around Tecolote to a white man named Hunter—did you ever hear of that? A. I never heard of it; if there was anything like that I would know about it."

516 I knew Miguel, he was my father-in-law. I talked to him every day and I never heard of such a paper. I knew Pablo was chief at Tesota when the railroad came to Tucson—I knew him well—he was friend to this Miguel—I talked to him often. I never heard anything about another paper in this case which says that Pablo, as chief of Tesota, sold half the land around Tesota to Hunter at that time. If there was such a thing I would have heard about it. I knew Con Quien—he was chief at Quijotoa. The Papagos in this part of the country never considered him chief of all the Papagos. During my life I never remember any head chief. They have chiefs at each village. I never heard of Con Quien, Miguel and Pablo and many other Papago chiefs meeting at Tucson and giving papers to Hunter or selling a half of any tracts of land to him—if it had happened, according to Papago custom they would have talked about it—they believe the land is their own and they talk about it. I was not present at the meeting at Sells a few years ago. I heard from the boys down there since. There was a lot of talk about it and since then I have tried and cannot remember that I ever heard of it before.

Cross-examination by Mr. Reid:

Before a man clears up a field it belongs to the Papago people. We are told that the edge of the Baboquivari range this way now belongs to all the Papagos alike—all the land in all the Papago country belongs to all the Papagos. When I was a boy the Papagos did not have one man to act as head of all the Papago people. They had a chief at each village, and those chiefs at each village would sometimes go to Sacaton to a man by the name of Louis—most all of their troubles they would settle among themselves. Louis was not head chief but he was the only one that talked English and when they would go from here they got him to do their talking—he was an Indian—that was after they had an agent at Sacaton who

517 had charge of the Indians down as far as the border between the U. S. and Mexico. The captains of the various villages met together and talked about various things—anyone would speak up and say what he had to say—no one presided as head of the meeting—there was no leader. I was never captain, but a councilor for the captain. I am not acquainted in the northern villages of the Papago country. This village is the farthest village south in the Papago country. These village people, as a rule, live in the same villages all their lives, and on important matters the people act through the chief—the chief is supposed to settle their troubles. He would speak up and ask questions.

Pursuant to the same stipulation herein referred to, the deposition of **Sam Pablo** was duly taken on behalf of Defendants through Hugh Norris, interpreter, at Santa Rosa Indian School, February 7, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Sam Pablo is my name; I am about 60 years old; full blood Papago Indian and live here at Kiacheemuck—I have lived here all my life—have fields here—my father used to have fields down below here but we let them go. I fixed this field myself. When a man dies his son or relatives take up his fields. The fields belong individually to the family. I remember well when the railroad came to Tucson; these villages were in the same places then that they are now—this was a larger village long ago. Achi was also a larger village but now there are just a few people living there. Some of them went to Pantak, some to Coyote and some to San Xavier. A Papago can go anywhere he pleases and take up fields if no other Papago cultivates them. If a man wants to take a new field he just goes ahead and clears up the land; according to Papago custom, the cattle range where they please, mixing with those of other villages. In the early days they had very few animals—they have more now—then they had a chief at each village—this village had one and the next one and the next one. I remember Luis, 518 a chief, about that time but I don't know his name—he was a chief here at our village—there was another at Achi, another at Anegam and another at Akchin. Then the chief here at Kiacheemuck had a council and when there was anything wrong he called them together to settle the trouble—according to Papago custom he could do nothing affecting the whole village without asking the advice of the council. I never heard of a council to discuss giving away or selling half the land around this village to Hunter—such a meeting would cause a great deal of talk among the villages.

“Q. Suppose a chief wanted to give a white man the right to go into the white man's court and bring a suit about the land around this village, would he have to call a council and discuss it with them? A. Yes, if there is any case comes up like that they would get together and talk about it.”

I never heard of any council being called to do anything with regard to the sale of land or a suit in court about the land here—if it was done I would surely know about it. I just lately heard of this suit. There is a lot of talk about it but no one seems to know anything about it. When the railroad came most of the houses in this village were built of grass, some of ocatilla plastered with mud—lately they have built adobe brick houses—in the early days the houses were scattered like now. We have no dividing line of any kind between Achi and this village, or between this village and Akchin.

“Q. Did you ever hear of a place anywhere around here called Mescalero? A. That I don't know.

Q. Or any place called Sierra Cabeza? A. They mean what we call Mauch-pot.

Q. Where is that? A. It is off in this direction (pointing northwest from Santa Rosa school.) (To the interpreter:) What does Mauch-pot mean in the Papago language? (Answer of interpreter:) It is kind of table like or flat."

519 In the old days there was not any church in Anegam, Achi, Akchin or this village. This village does not, nor do any of these villages around here claim to own any tract of land 24 miles by 30 miles. We can believe it belongs to the government. I have seen this gentleman here Capt. W. C. Reid, of Albuquerque—I saw him at the store just lately. I do not know that he is representing what is called the Pueblo of Santa Rosa in this suit in Washington—he came here and said a few words and then went away. I don't know of any Papago ever employing a lawyer—if it was I would know it.

Cross-examination by Mr. Reid:

If two men could not agree on taking up a piece of land, they would usually go to their head man or chief and settle that point. The chief settles the troubles of the people in the Papago villages and when the chief tells them what to do they do it. If they think the chief is wrong they won't obey him, but if they think he is right they will. Nothing will happen if they don't obey him and they don't need to obey the chief. He usually tells the people what is right. It is his duty to look after the rights of the people of the village and see that they are protected. On important matters the chief never would act without calling a council. In the early days when a chief died the people got together and elected a new chief. Kiacheemuck is a central point for these other villages around here. It is about a center village from Akchin to Anegam. They have a chief at each village. It is not a fact that sometimes a chief has two villages under his control or is chief of more than one village. They did not have a head chief in the old days. I knew Con Quien—he was not head chief of a number of villages—he was chief of his own village. The first I heard of this suit was two years ago—Pitot told me about it—he told me that there were some white people came to him and asked him as to whether he knew that there was some land given away or sold, and this man Pitot told me he never
520 heard anything about it. When I came back home there was just a little talk about it; I did not hear much. I was not at the Sells meeting when this suit was talked about—I never heard about it. I have never been chief or leading man.

"Q. Do the Papago Indians own all the land between here and the mountains to the west? A. Yes, they believe that.

Q. And they own all the land between here and the Santa Rosa Mountain and Kabitka on the east? A. Yes, they also *believe* they own that.

Q. Do you people here claim to own—you people here in this

village that we are in now, or these villages here, claim to own all the land between here and the Mauch-pot, commonly known as Cabeza? A. Yes, they believe that belongs to them.

Q. And they believe they own all the land between here and the mountains to the south and east—Comebabi and North Comobabi Mountains? A. Yes, they believe it is theirs.

Q. And you believe that you people in these 4 villages that we have been talking about own all the land that I have asked you about? A. We believe the land here belongs to all of the Papagos.

Q. Ask him if he has heard these 4 villages spoken of as the Santa Rosa villages? A. No, I don't know, Mexicans call it Santa Rosa."

The Mexicans call all these 4 villages Santa Rosa because they don't know the Indian names. The Indian fellow that was with W. C. Reid asked me if I heard there was going to be somebody around here inquiring about this trouble and if they happened to ask me what would I say to them—I said I would tell them whatever the government did about this land would be all right—I knew the suit was about this land here—I don't know very well what the suit is about; I think it is about the land. I know what a lawyer

is—his business would be when a case is like it is now for
521 him to work and settle it one way or another. This land between the Quijotoas on the west and Santa Rosa Mountains on the east belongs to the whole tribe, all north and south.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Lopez** was duly taken on behalf of Defendants through Hugh Norris, interpreter, at Santa Rosa School, February 7, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Lopez is my name; I am 70 years old; I live up here at that group of houses in Kiacheemuck—I have a field—I got it from a young nephew—he took it up and cultivated it for a while and got sick. Before he died he told me to use it. When a Papago dies the nearest relatives take the land—they own their fields individually. Kiacheemuck does not claim to own any definite track of land—there is no dividing line. Papagos can leave their fields and take up others not occupied. Live stock are mixed and range together. At the time of the earthquake Papagos did not own much stock, the Apaches stole it—they have a lot of live stock now. In the old days the houses were made of grass and ocatilla mostly. There were no adobe brick houses then. Then each village had a chief all around this way—there was no head chief over all the villages. In those days if any thing of importance came up they would usually call all the people in the village to talk about it. I never heard that Luis and other chiefs met at Tucson and gave papers to a white man named Hunter, giving away or selling one half of the land around these villages. No council was called here to discuss that. There never was a council called here to talk about land—they talked of other things but not about land—if they had I would certainly know about it and I would tell it right now. I never heard that

at that same meeting in Tucson in the early days Luis gave this white man a paper that gave him the right to go into the white man's court and bring a suit regarding the land around this village—
 522 there never was a council held to talk about that. I don't know of any chief here right now. There is a chief at Akchin, they call him Jose Katorta. I never heard any talk around at Kiacheemuck about this suit in the white man's court concerning the Papago lands, or about the deeds.

Cross-examination by Mr. Reid:

I heard about the Sells meeting—it might have been 3 or 4 years ago. In fighting the Apaches if we had any leader there may be a dozen or two dozen or something like that. We never had one leader. Anybody had a right to speak. What I heard was the same thing you are talking about now—whether anybody knew that there was any land that was agreed to be given away. I never attended the meeting. I have never been chief of my village, but I am a member of the council. I go to the meetings, and sometimes I speak. The name of the last chief of this village is Nanakimule Vunowe, (in English is Bat's Eyes.) He died lately; he was not chief of all these villages around here; he was chief of this village right around here. He was chief of Kiacheemuck. It only goes a little ways. The people of this village do not have to stay between these mountains on the east and on the west—they can take up land anywhere. Their stock can go where they please. If the people want to they can go on the other side of Kabitka Mountain to take up land.

Pursuant to the first stipulation herein referred to, the deposition of **Andres** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at Santa Rosa Indian School, February 7, 1922, and contained evidence as follows:

Direct examination:

I was a grown man when the railroad came to Tucson and a full blood Papago—live in Kiacheemuck—I own a field there which I got from my father. When a Papago dies his fields *to* to his children or to relatives. Asked whether the different families own their own fields or whether all the village together owns all the land around it; I say that if a man had a field it would belong to him and his family. A Papago can take up any field he finds
 523 in case no other Papago is occupying it. He does not have to ask anyone's permission. The cattle of each village range where they please and are mixed up. At the time the railroad came to Tucson the Papagos had very few stock—4 or 5 head to a family. They usually had grass houses then. Kiacheemuck was about the same place then as it is now. Achi was a large village then at about the same place as it is now. Now only a few live there. They are scattered as far as San Xavier. Anegam was about the same size. In those days each village had its chief. Kiacheemuck and

Achi each had its separate chief. In those days when anything important came up the chief would call all or some of the people and talk it over. Anyone could come who wanted to speak. I never heard about Luis, chief at Kiacheemuck, meeting with the other chiefs at Tucson and giving a white man a paper which sold or gave away half the land around here, or a paper which gave him the right to go into the American court and bring a suit about the land here. There was never any council held here about that. I would know about it if there had been. In those days the chief would have no power, without a council meeting, to sell or give away part of the lands, or to give a white man the right to sue about them. He would have a meeting and talk about it.

Cross-examination by Mr. Reid:

As long as I can remember, I never knew of any meeting where they talked about giving or selling any of the land. I heard about a land suit in the American court, not very long ago, after the meeting they had at Sells, but I said I never heard anything like that before. I was not at the Sells Meeting. I heard what the last witness said and what was said in the yard when these former witnesses were talking to the interpreter.

Pursuant to the first stipulation herein referred to, the deposition of **Joaquin** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at Santa Rosa Indian School, February 524 8, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Joaquin is my name; I am a full blood Papago Indian and live here at Kiacheemuck; I am about 60 years old. I have fields here that used to belong to my father. When a man dies his fields go to his children—any Papago can take any fields if not occupied. The Kiacheemuck people go to Covered Wells when the water gives out, pretty near all of them go up to Covered Wells—this has been so as far back as I remember. The people of Akechin go to Como-babi and Cababi. The people from Achi go to Silynarki—this has been so as far back as I can remember. I remember when the railroad came to Tucson. In those days each village had its own chief—I don't know how it is now—I don't know whether Konderone is chief of Kiacheemuck now or not. In those days a chief could do nothing by himself—he would call in the people and talk about it. Sometimes he just called in a few—sometimes all. The fields around Kiacheemuck belong to the families—no one else has a right in my field—it is the same way with other fields. The people in this village do not claim to own a tract 24 miles by 30 miles—they believe the whole reservation belongs to them—they have no claim except on the reservation. I don't know anything about Luis giving Hunter the right to bring this suit—I never heard anything about it in the early days. I never heard anything about a Council being called about it—if there had been I would know it. According

to Papago custom a chief did not have the right to give away or sell a half interest in the land around here without getting consent of the council. I never heard of Papagoes selling lands to anyone. I have heard about this suit in the last few years—I don't know how long ago I heard about it—I could not say that there has been any talk about it lately.

Cross-examination by Mr. Reid:

These people who go to Covered Wells for water call this place Kiacheemuck, their home. The people who go from Akchin to Comobabi call Akchin their home. Comobabi is an old village, mostly all the houses there are built of adobe brick. When that town was first built they did not have adobe houses. As far back as I can remember the people there had adobe houses. I account for it because they had no ocatillas or grass around there. In the old days Cababi had mostly ocatilla houses, maybe some adobe—this was true at Covered Wells also. All the houses in Kiacheemuck, Akchin, Achi and Anegam were of ocatilla as far back as I remember. It is the newer villages that have built their homes of adobe. I remember Con Quien, he was a chief. I don't know if the captains in the old days got together to elect a head chief. As far back as I remember the fields I now have were owned by my father. I have not been to all the Papago villages in the Papago country—I don't know how many there are. The people of the Papago country with whom I have talked generally understand and believe that they own all the land in and about the Papago country from the Mexican line north to the boundary of the Papago country and they believe they own all the land between the villages farthest on the east and the villages farthest on the west.

“Q. Did the people that you have talked to, and do you, yourself, know that some 12 years ago certain officers of the U. S., attempted to give away and to sell all the land in the Papago country to white people? A. No, I never heard of it.

Q. You would not want the officials of the government to do a thing like that, would you? A. That I don't know.

Q. Do you mean to say that you don't know whether you want the government to give and sell all this land here to white people, or not? A. It is up to the government to do what he pleases.

Q. You are willing for the government to take this land here away from you and give it to the white people? A. I don't know that, I could not tell you.

526 Q. Did you hear that this suit that you have been testifying about was a suit to stop the officials of the government from opening this land for entry by the white man? A. I don't know.

(Defendants objected to all the questions above quoted as incompetent, irrelevant, immaterial and misleading.)

Pursuant to the first stipulation herein referred to, the deposition of **Jose Lopez (II)** was duly taken on behalf of Defendants, through

Hugh Norris, interpreter, at Santa Rosa School, February 8, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Lopez is my name; I live here at Kiacheemuck; I believe I am past 50 years of age. The Jose Lopez who testified yesterday is my uncle. I have lived here all my life; am a full blood Papago Indian, and have fields here which I got from my father. According to Papago custom one can take up unoccupied fields any place.

It is stipulated in the record that the Southern Pacific Railroad reached Tucson from the west in 1880, and was extended east in 1881.

Witness: This custom was the same in the early days—Kiacheemuck looked about the same then as now—Akchin was about the same. Achi at that time was a larger village than it is now—Anegum was about the same. When I was a boy the people around here had very few horses and cattle—they own much more now. Then each village had a chief—it is pretty near the same here now. Then if anyone died in a house it would be burned down or destroyed—they don't do that now. In the old days when things of importance came up affecting the whole village the chief would sometimes call a few of them together, or at other times we would call the whole village together to talk about it. I sometimes go to their meetings at Kiacheemuck. It would be impossible in the old days and a chief could not give a white man the right to bring a suit affecting 527 the Papago land without consent of the people. I never heard of a council to give a white man power to bring a suit about this land here—if there had been such a council I would surely hear about it.

"Q. They say also that at the time the chief of this village gave the white man power to bring that suit, he also sold or gave away half of the land around this village to the same white man—did you ever hear of that in the old days? A. I said awhile ago I never heard anything about it before, if there was anything like that I would know about it."

I never knew of any such council in my life time—I never heard of any Papagos selling their land at all.

Cross-examination by Mr. Reid:

I was here yesterday when the testimony of other witnesses for the government was taken. I was not here the day before. I heard what the witness for the government testified to yesterday. I go to Covered Wells when the water here gives out. When my father was alive here he also went there when the water was short, here. We both called Kiacheemuck our home. My father got these fields from his father. I don't remember anything important at any meeting I ever attended. We usually talk on how we are going to get along and what we are going to do next. I don't remember anything more important except the water, our horses and cows. I knew Con Quien. No chief

would ever attempt to sell or give away any land without the consent of the Papago people. There has been no chief who would do anything without seeing all the people. I never heard about this suit or these deeds until yesterday. I never heard that 12 or 14 years ago the government, through its officials, has opened all the Papago land to homestead settlements. The Papagos believe they own all the land in what is known as the Papago country. I believe that the witnesses yesterday were telling the truth—all they know about it.

528 Pursuant to the first stipulation herein referred to, the deposition of **F. S. Herndon** was duly taken on behalf of Defendants at Santa Rosa Indian School, February 8, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

F. S. Herndon is my name; am 57 years old and live at Sells, Arizona. I am a Minister of the Presbyterian Church. I have lived in this part of the country 28 years. I have done ministerial work in Tucson and in the Papago Indian country for about 19 years, which required extensive travel in the Papago Reservation. During that time I have become familiar with the region that is generally known as the Santa Rosa district. I speak and understand Papago some. When I first became familiar with this Santa Rosa region, the name Santa Rosa was applied to a large section of country in this district, beginning with the Santa Rosa ranch over on the other side of the Comobabi Mountains, including all of this section for a good many miles around.

"Q. In those days were any of these groups of villages here, Kiacheemuck, Achi, Akchin or Anegam called Santa Rosa? A. No, sir."

I have sometimes heard the Papago Indians using the term Santa Rosa—when speaking to Mexicans they would often use the term Santa Rosa. I never heard anyone speak of the Pueblo of Santa Rosa before I heard of this suit. Papagos speaking to others, not Indians, used the term in this larger sense as referring to the section that I have just mentioned. When I first became familiar with the country most of the houses were made of grass with one door, 3 feet high probably, no windows. Then they made some little square houses of ocatilla which they plastered over with mud inside and outside—these had a larger door usually. About 10 or 15 years ago they began to build of adobe brick. These conditions are true of all the villages. Kiacheemuck is a little larger now than then.

529 I don't know about Achi—it is a little off the road. Akchin was a large village when I first came—it is larger now—Anegam is about the same. Then the arrangement of the houses was very much as they are now in this village—no regularity, no streets but little groups of houses, possibly a quarter or a half mile apart, with sometimes a field and sometimes the desert between them. There has been no plaza in this village at any time I have known it—the other villages were all similar to this one—then they had much fewer

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tle and horses than now. I never heard of this village or any other Papago village owning or claiming a tract of land with any definite boundaries. They claim and own their fields, but the outlying land is common property and they consider that it belongs to all of them and their cattle and horses range on any and all of it. According to Papago custom the village, as a municipality or unit, does not own the fields—they are owned by the individuals. The Papagos then now know very little of the white man's law.

"Q. Can you describe in any way the extent of their knowledge of the law? A. Well, from my general knowledge of them and especially of these people over here in this section of the country, they recognize only their Indian customs and laws and they have disregarded, as far as they have been able, the laws of the U. S.; the chief of this village here was found guilty of disobeying the draft, discouraging the drafting of young men when we entered the war, and he was tried and served in jail since for breaking the law.

Q. Taking the Papagos in general as far back as you remember them, would such things as a deed or a power of attorney, or a sale in fee simple, mean anything to them? A. No, very little.

Q. Within your knowledge, has any Papago ever sold any of his land to anyone else? A. Never."

30 When I first came the villages in the Santa Rosa Region each had its own chief.

"Q. And was there a form of government or organization, or was it primitive? A. It was primitive.

Q. What authority was there beside the chief? A. The chief usually had a council or advisors whom he consulted about any matters of importance—I think all the men of the village were usually called together in council and they expressed their opinion about any matters that were of common interest in the village.

Q. Do you know how such a council or meeting was summoned? A. The original custom when the village was to be called together was for the chief to climb up on the top of a house in the evening and call out to them to come to meeting."

The chief had no power to decide how matters of wide importance to the community should be, without advice of the council. I never heard of the meeting of the chiefs of these villages at Tucson in 1880, at which a tract of land around this place was sold to Hunter until I became familiar with this case.

"Q. When did you become familiar with this case? A. I don't remember the year, whether it was the time a man by the name of Brown came out over the Papago country and I heard, more or less, from the Indians about it."

Up to that time I had never heard that any chief had given any power of attorney to said Hunter to bring suit affecting these lands. I never heard of any power of attorney at all until that man Brown came through here. According to my knowledge of Papago custom

and usage, the chief would not have the power to give such power of attorney, or such deed without consulting the council or meeting. There has never been any head chief over the whole Papago people during my time here. These council meetings of villages
531 were not called at different intervals like a city council—they were called irregularly when anything of interest or importance came up. When I first knew the Papagos here they made little ponds, such as we see in some places now and diverted the water during the rainy season into them for cattle and domestic use—they made no attempt to irrigate from them. During the rainfall they irrigated from the arroyos by making funnel shaped ditches and diverting the water into their fields during the freshets. Water governs the residence of the Papagos between the villages in the mountains and those in the valleys. In the rainy season they live in the valleys and cultivate their fields and during the dry season they move to the mountains where they have permanent wells. Their residences in each place depended upon the season. They have no written language—there are different dialects in different parts of the Papago country. I have always understood that they were divided into 4 groups—their geographical location is, one at Tecolote along the Mexican border and includes Tecolote, San Miguel, Cowlic and Vamori; then a group, I am unable to give the name of, including the San Xavier Indians, and I believe some of the Comobabi and Cababi Indians, belonging to that group, or geographically, the central group; then in the north the Kohotk, (same as Quijotoas) group. I am not quite sure about the 4th group, whether that includes those of the northwest—I am of the opinion that it does—that is called Kaka. When I first knew them a very small number spoke English or Spanish. Some of those near the Mexican border spoke Spanish but the others knew only a few words they used in trading—they could not carry on a conversation and they cannot yet. When I first knew them they were very much opposed to schools. They were always friendly but I cannot say they welcomed the white man coming into their country.

532 “Q. Did you ever hear in those early days of any disposition on the part of any of them to sell any of their lands to the white man? A. Never, the very opposite was true in my experience.”

Cross-examination by Mr. Reid:

It is my idea that the Santa Rosa ranch was about 6 miles north-east of the town of Comobabi. You understand, I am speaking in a general way of the territory, including in it the Santa Rosa ranch. The Santa Rosa ranch includes the country and not a corral and buildings—the ranch was quite a large cattle ranch.

(Witness is here asked to mark the approximate site of the ranch headquarters by the letter S.)

“Q. And how far north from there did the Santa Rosa country run? A. That is another guess, say 8 or 10 miles.

Q. And then how far west of that north point did it extend? A. I would say that it extended to those hills around here.

Q. The Quijotoas? A. Those on the west of us, I don't know their name.

Q. How far would they be west from the northeast corner of that district? A. Say 15 or 20 miles, maybe.

Q. Then south perhaps a line some 10 or 12 miles long? A. Yes, including Cababi and Comobabi; they are spoken of as Santa Rosa?

Q. And Covered Wells country, that was Santa Rosa, was it not? A. Yes, I suppose part of that would be included.

Q. And did the people from Kiacheemuck go down there? A. Yes, sir."

I never discussed the boundaries or the boundary lines with any of the chiefs or anything of the kind. I did not know Con Quien—I have heard of him often. It was 1910, or earlier that I heard of Brown being out in this country, taking up with the Indians the matter of these Hunter deeds and powers of attorney, I did not see him myself but the Indians told me about it—quite a number of Indians at Indian Oasis, Vamori and San Miguel spoke to me about it. They seemed to have some idea that he was making
533 an effort to get away with some of their land. I do not recall that they said he represented anybody connected with the Hunter matter that was transacted in 1880 but I was told he represented himself to be a priest in order to have some influence with the Indians. I don't know whether or not he was a priest but from what I heard from the Indians, it was the Hunter matter that originated in 1880 that he was reviving with the Indians. I did not hear any Indians about the Santa Rosa district remark about it—I was living in Tucson at that time but I was working in that district and travelling through this district also but my work was principally through the southern district where I heard these remarks. The Indians never discuss selling their land—they have been rather jealous of their rights in respect to their lands. The Papagos from one end of the reservation to the other claim all the lands between the villages and surrounding villages—they claim it all. It is my understanding that they believe they own their lands and that their ancestors, too, owned it all before them, from time immemorial. I believe they own it because they had lived on it and their ancestors had lived on it from time immemorial. In my acquaintance with them they have kept the white man out of the country except the prospectors and such things until recently. In recent years the government has been active in looking after their affairs. Up to the time the government established the agency over them, they, more or less, protected their own land—since then they look to the agent to do that, more or less.

"Q. Is it not a fact that the government coming in through the agent and others, more or less, destroyed their own local government and substituted therefor the rules and regulations of the Government of the U. S.? A. They still maintain their chiefs in most

of the villages and their head men, and they have their Indian court as they did before the government came in."

534 I believe the larger affairs are transacted by the Indian agent for them. The reason the Indians opposed the establishment of the schools among them was they wanted to keep on with their own ways—they were jealous of the white man and his customs and very settled. The older men desired to be let alone and be allowed to live as they had lived from time immemorial.

Examination by Mr. Fraser:

"Q. You said that the term Santa Rosa was used to designate a large tract in this vicinity, was it a definite or indefinite tract? A. It was always very indefinite to me."

I never heard of it having a recognized boundary line. When the reservation was set apart the Santa Rosa ranch was excluded from it.

Examination by Mr. Reid:

"Q. Do you know of another cattle ranch to the north of us, some one with several hundred head of cattle close by? A. I don't know him personally—I understand there is a man in the strip that was opened after the reservation was made.

Q. What was that strip that was opened? A. The Pima county authorities objected to the reservation originally and a hearing was held at Washington and they asked for a strip to be opened so that a road might be built between Tucson and Ajo and a strip varying from 6 to 12 miles in width was opened the full length or width of the reservation.

Q. That is open to settlement by white people is it not? A. I understand that when it was opened it belonged to the public domain the same as other land.

Q. Was that formerly considered Papago country, or not, this strip you have mentioned? A. It was."

535 I suppose that the Papago horses range on that strip except where it is fenced—I suppose the strip is 40 or 50 miles through. It is my understanding that this strip must be still open for settlement, by homestead entry, by the white man.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Ignacio** was duly taken on behalf of Defendants through Hugh Norris, interpreter, at Santa Rosa School, February 10, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Ignacio is my name; I live at Anegam, and am a full blood Papago Indian, 60 years old. I have fields at Anegam—have lived there all my life, and remember when the railroad came to Tucson—my mountain village is Comolic. My fields belonged to my father—

he used them. When a Papago dies the custom is the son or the family takes the fields. The farms belong to each family. By Papago custom a man can go anywhere in the country and take unoccupied fields. Cattle range anywhere—they have no regular herders, as you call them and when anyone wants to see them they go and look them over. I never heard of the cattle of one Papago village being kept away by the people of some other village. When the railroad came Papagos around here had very few cattle—they have much more now—now most every Indian has some cattle. Then each village had a chief. Luis was then living and was chief at Anegam only—then a chief could not do anything alone, he had to call some of the people, or sometimes call all of the people to come together. He could not sell or give away any of the land around a village without calling the people and getting their consent.

"Q. The people who brought this suit say that in the year the railroad came to Tucson this Luis, who was chief gave a white man called Hunter the right to bring this suit—did you hear of that at the time? A. No, I do not know that."

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Luis never spoke or told anything like that. I never knew of a council being called to consider that thing—if it was I would know something about it. I don't know anything about Luis giving away or selling part of the land around here to this man Hunter. If Luis had done anything of that sort his custom would be to call a council about it and talk to them. I never heard anything about it. I heard about this suit or the sale of this land recently. Luis is dead. There is some talk about this suit around Anegam lately, no one seems to know anything about it. In the old days the houses at Anegam were built of grass mostly—it was larger then than it is now—they are dying off.

"Q. Is there any mountain or range of mountains that you can see from here that the Papagos call by a name that means "head" in the Papago language? A. There is a mountain out this way west of Cohat.

Q. And what do the Papagos call it? A. Schuk-mo (Black Head)."

There is no other mountain in sight from this place that the Papago call a head of any sort.

Cross-examination by Mr. Reid:

If I started in the morning early with a wagon and team it would be early in the afternoon when I got to Comolic.

"Q. Is that village on this side or the other side of the strip of land which runs through the recently established Papago reservation which has been thrown open? A. The fence is this side of Comolic.

Q. Are both the fences this side of Comolic? A. Yes.

Q. Were the Papagos consulted by anyone when that strip was

thrown open and taken from the reservation? A. No, they were never consulted.

Q. On important land matters, such as that, do not the chiefs call a council to talk it over? A. I don't know, they never had a meeting about it."

537 I never heard of a council at San Xavier in the early days to authorize the railroad to build through the Papago country—they never had any council about that. I never heard of a council meeting of chiefs being held at San Xavier prior to the time the railroad went through the Papago country which authorized the sale of the right of way to the railroad company,—if there had been any such meeting I would know. My father got the fields I now occupy from his father. My father was never a chief and I was never a chief. That young man sitting over there with a black coat on is chief at Anegam now. His name is Jose Juan—he is chief of one village—some of the people got together and appointed him. I don't know if he went to the Indian agent to be approved as chief—I do know the old chief who was our chief was approved at San Xavier Agency but about this young man I don't know. I never knew of any head chief at all. I knew Con Quien well. I don't know if Luis who used to be our captain went to Con Quien or not. The village of San Miguel is south from here but I have never been there—it is a long way from Vinumkirk. I don't know where the village of Sells is. I know where Topowa is—I have heard but I have never been there. I don't know where the village of Vamori is. I have been to the village of Coyote several time—they have a well there. I have heard about Tecolote but have never been there.

"Q. According to the Indian custom and law would the people of your village be permitted to drive their cattle down to Vamori and use that place to water their cattle? A. No, they would not do that.

Q. Would they be allowed to take their cattle to a charco or water them outside of your own district? A. At a little charco the stock can water there any time, and at the well if the stock is there, it can be watered there."

538 If any of the people here go to Vamori they can take up land. The reason the people had no cattle in the early days is that they were very poor—they could not afford to own live stock—they are more able now. The troublesome Apaches might have been one of the reasons the Papagos could not own cattle. The Apaches became peaceful just about the time the railroad passed, then I was a young fellow about 4 feet high. I don't know what is meant by a tract of land 24 miles wide and 30 miles long—it is a large tract. I did not attend the Sells meeting about 4 years ago—I heard of it—rather a long time ago from a good many of my people around here. I don't know what the meeting was about no one ever told me what the meeting was about. I did not talk to anyone about what I have testified to when I would be called as a witness. None of the government men came to my village to see me about it. The party that came to my place this morning brought

me down here. They tell me to come and testify—they did not ask me about the case and what I would testify to. They told me that the case was about this land—they asked me what I knew about it—they did not ask me such questions as have been asked here before the notary.

"Q. What was told you about the suit about the land, before you testified? A. They tell me of this land case, that if certain people win the case they will take one half of our land."

It is sometime ago since I heard about it. I heard of it coming from the cotton fields—I was at the cotton fields this year and last year—I was not there year before last—last year was the first time I went there. I don't know any Spanish words at all. Some of the old Papago men speak a little of it. I don't know a mountain called Table Top Mountain. I have noticed a flat top mountain to the northwest, about 2 days drive with a team. That is not the mountain that I referred to as Schuk-mo. The one I speak
539 of is right close. I remember chief Luis well. I don't know what is referred to as Santa Rosa villages. Luis had no chiefs under him as assistant chiefs. There was a chief then at Kiacheemuck but I don't remember who he was. I was never a member of my village council—sometimes I go there but have never taken part in the meetings—I have never taken any part in the government of my village—I never say a word—I have never been very much interested in the work of the chief and council. I know of a mountain called Kabitka. I don't know of Oximo south of there. I know where the Comobabi Mountains are, south of Kabitka. Con Quien was chief of his own village, but I don't know its name. The reason people of Anegam would not drive their cattle to Vamori to water is they had water around here and there was no reason why they would take them over there to water; but if a man from Anegam found some of his cattle near Vamori the people there would allow his cattle to drink at any little charco. I heard of a meeting at the Indian Agency regarding the sale of the land—the people here talked about it some after the meeting.

"Q. What did they say about it? A. The talk about it was that one half of this land would be taken up by somebody.

Q. Were you ever told, or did you ever hear the people talk about this suit being brought to protect the land for the Indians and keep it from being taken away from them and thrown open to public entry? A. I don't know.

Q. Then all you heard about this suit was that it was a suit to take away half the land of the Papago people, is that correct? A. Yes, I have heard about that, yes.

Q. That is all you have heard about it? A. Yes, that is all I have heard.

Q. That is what the Indians believe, that this suit is about, is it not to take away half the land of the Papago people? A. Yes, that is the way they understand."

540 Pursuant to the first stipulation herein referred to, the deposition of **Jose Paoli** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at Silynarki Village, Feb. 11, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Paoli is my name; I live right here; (Silynarki)—the rest of the year I live down in the valley at Makonoika—it is not very far from Achi; I am full blood Papago; I am 67 years old. I was grown and married and had children when the railroad came—then the people of Achi came here in the dry season. Jose Patero is chief at Achi now—he is chief of one village. When the railroad came Luis was chief of Achi.

"Q. Was that the same man or the same Luis that was chief at Anegam? A. He was Jose Luis.

Q. Of what village was Jose Luis Chief? A. Anegam.

Mr. Reid: I want it to appear of record that the witness nodded his head in the affirmative and used that grunt for yes.

Mr. Fraser: I wish to have it stated into the record that you appear to want what appears to be a mistake inserted into the record instead of the real truth.

Mr. Reid: Counsel for plaintiff understands the Papago sound and words for yes and no, and in answer to the question as to whether the same Luis was captain of Anegam, this witness was understood by counsel for plaintiff to say yes and he stopped and ended his answer; that thereafter the interpreter spoke to him in words the counsel for plaintiff could not understand without repeating the answer to the witness.

Mr. Fraser: There is no need for any question or controversy about this matter. The question can be repeated and the exact truth determined.

Mr. Reid: We certainly object to a conversation with the interpreter and the witness when the answer appears to be adverse and
541 desire to protest.

Mr. Fraser: No proper objection can be urged to conversation between the interpreter and the witness if the interpreter sees that the witness has misunderstood the question.

Q. Was Luis, who was chief at Achi, any relative of yours? A. He was my uncle.

Q. Is he living now? A. He is dead.

Q. Is the Luis who was your uncle the same man as Jose Luis who was once chief of Anegam? A. Yes.

Q. Did you not tell me 5 minutes ago that your uncle Luis was a different man from Jose Luis who was chief at Anegam?

Mr. Kleindienst: Objected to on the ground that the question was plainly asked and answered and as an attempt to impeach defendants' own witness.

Mr. Fraser: Rather as an attempt to refresh the recollection of the witness and arrive at the truth, whatever it may be.

Mr. Reid: We further object for the reason that an attempt to refresh his recollection for 5 minutes is not permissible.

Mr. Fraser: I wish to have the truth from this witness, whatever it may be.

A. I said he was a different man, though both have the same name, "Jose Luis."

Q. But he was a different man? A. A different man, the one at Anegam."

My uncle was chief at Achi. At that time the people lived in grass houses—there may have been a few sahuaro rib houses in those days. The people at Achi had no cattle at all. In those days on matters of importance the chief would have a meeting and talk about things—I attended some of these meetings. I knew Con Quien—he was chief at Quijotoa only—he was never head chief. As to the statement that Luis met with Con Quien and a number of other chiefs at Tucson and gave or sold to a white man named Hunter an interest in all the land around Achi and that neighborhood, there was never a council at Achi to consider that matter.

542 I never heard of this and if there had been such a meeting I would certainly know about it. I never heard that these chiefs gave the right to this white man to bring suit nor of any council around Achi and this vicinity about it—if there had been such a council I would certainly know about it. I have heard about these things within the last few years. There has been much talk about them at Achi—they never found anything about it. At that time very few of the people at Achi spoke Spanish—my uncle Luis never talked Spanish. In those days the Papago at Achi describing any village, would not say Santa Rosa, they would say Achi. They would say Santa Rosa talking to Mexicans. None of the people of Achi spoke English—in those days there were no schools there.

Cross-examination by Mr. Reid:

I call both Achi and Silynarki home. I have a field this side of Achi. I have never been chief at all—I have been and am now, a member of the chief's council. The towns of Achi and Silynarki have the same chief—they had the same chief in the early days when the railroad came. It takes about half a day to drive from Achi to Silynarki with a team. Asked how many hours it takes, I answer that I do not know what an hour is. In the old times the people did not have better houses in the mountains than the valleys but now it is different. You need warmer houses there. In the old days I did not know anything about a head chief—they had a chief at Achi, that is all I know. If they had one before my time, I would not know but since my time I never heard of a head chief. I went to fight the Apaches once when I was young but I did not kill any. Asked who was head chief of the Papago force, I say they all talked together. If anyone had a word to say he was allowed

to talk it. I never knew my uncle to tell the chief at Anegam what he should do. I never heard of the Papagos making any contract for the sale of any land or for the sale of a right of way through their land.

543 "Q. Do you remember whether Luis and a number of other chiefs went in to Tucson together about the time that the railroad came there? A. No, I don't remember.

Q. If they had ever gone in there with Con Quien and other chiefs would you have known it? A. I would know it.

Q. If they had had a matter important enough for Con Quien and other chiefs to go in to Tucson in 1880, would they have called councils in the various villages and talked it over? A. I would know it."

If there had been, they would have called a council and if there was any, I would know it. I never heard or knew of several chiefs of the different villages going to San Xavier or Tucson about 1880. I knew a man at this village by the name of Hasuwa—he is dead 2 years—he had a record stick of what transpired in the village of Silynarki or Achi, but I don't know what became of it now—I took a look at it once—I don't remember it now. I did not know how to read the marks on the stick. I first heard of this suit 2 or 3 years ago at a meeting here at the village.

"Q. What was said about the suit at that meeting? A. The talk was that there was some trouble about land and that the land was going to be taken away or sold. At the meeting I am speaking of it was inquired if any of us knew anything about it—none of them seemed to know anything about it at all."

There is no record stick kept around here now. Jose Patro, the present chief, is over there at San Xaxier or Tucson now. When I was young the houses at Silynarki were made of ocatilla and sahuaro ribs—there were no grass houses here then. When I was young all the people of Achi were in the habit of coming to Silynarki when it was dry in the valley—some of them went to San Xavier also. The people of Anegam go west to a well at the mountain when it becomes dry in the valley. Some of the people go to Comolic from Anegam in dry season—they are living at Comolic now. The people of Kiacheemuck go to Covered Wells when it becomes 544 dry in the valley. The people of Akehin go to Comobabi when it becomes dry in the valley. These people in all these villages have been going to the same winter villages ever since I was a boy.

"Q. But all these people that we have been talking about come back to Santa Rosa when the rains come? A. Yes.

Q. They have their fields there, do they? A. Yes, they have their fields there.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Kisto** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at Silynarki Village, Feb. 11, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Kisto is my name; am full blood Papago Indian; I live at Anegam. I remember when the railroad came to Tucson. I was so high then (measuring about $4\frac{1}{2}$ feet—witness is now about 6 feet tall). I have a field at Anegam and one at Achi too—one of them belonged to my father—I got it from him—the other belonged to my wife. When I was a boy Luis was chief at Achi—that is the same Luis that Jose has just spoken of—he was only chief at Achi. In those days I did not know of any head chief at all. Then the houses at Anegam and Achi were built of grass. Then people had very few livestock. Then Jose Luis was chief at Anegam. In those days a chief would have no power to do anything by himself on things of importance—sometimes he would just call a few, and sometimes the whole village would get together to advise. I never attended council meetings when I was young. When I was older I attended some of their meetings.

"Q. It is said that a chief named Luis went with other chiefs to Tucson the year the railroad came and gave a white man named Hunter a paper which gave him the right to part of the land
545 around Achi—did you ever hear of that when you were a boy? A. I never heard of it."

I never remember of any council called to talk about it. I never heard of any council called when I was young to consider giving this same Hunter the right to bring a suit in the white man's court about the land around Achi. There was never a council held—I never heard of it. According to Papago custom Luis could not do it without calling a council. I never heard of any Papago selling his land. I have heard about this sale of the Papago lands and this suit 2 or 3 or 4 years ago—they had a meeting here and talked about it. I have never heard of any Papago who had heard about these things in the early days. According to Papago custom the different families owned the cultivated fields. According to Papago custom the chief and the council together could not sell the fields—they would never sell. According to Papago custom the chief and council had no power to sell the land of any Papago—they have never sold any.

Cross-examination by Mr. Reid:

I have lived in Anegam and Silynarki all my life. The people of various Papago villages generally live their entire lives in two villages, one summer and one winter—they very seldom change their residence from one village to another. If I had been too young I would not remember the council meetings of 1880, but I never heard of it. When the people at the meeting talked about this suit

they thought this suit was one which would take one half of the land away from the Papago people, or something to that effect. Cuevo is this way from Kiacheemuck—it is east in the direction of Santa Rosa—it is not at the foot of the mountain called Kabitka; it is a little ways from the village. The people at Cuevo all come here to Silynarki when the water becomes scarce in Santa Rosa.

“Q. Was the same Luis the chief of Anegam and Achi in the early days? A. No.

Mr. Reid to Interpreter: Did you not use the word Kiacheemuck then?

Interpreter: Yes.

546 “Mr. Reid: The interpreter misunderstood the question and asked the witness if the same man was chief of Anegam and Kiacheemuck, and his attention was called to it and he asked the proper question to the witness and the answer was ‘yes.’

Mr. Fraser: Counsel for defendants object to the remark of counsel for plaintiff as an entirely unsupported inference of his own as to whether the interpreter did or did not understand; also that the question as formed was not sufficiently clear for an uneducated person to be certain of, and counsel for defendants asks that the question be repeated in form unmistakably clear and the answer of the witness again taken.

Mr. Reid: Counsel for the plaintiff asks that the interpreter make a statement into the record as to how he interpreted the question when it was first put to the witness, whether as a matter of fact he used the word Kiacheemuck instead of either the word Achi or Anegam.

Interpreter: I interpreted by asking if the chief at Anegam was the chief at Kiacheemuck.

Mr. Fraser: It is clear that there was a misunderstanding by the interpreter in the use of one word instead of another, of a most ordinary sort which anyone interpreting is apt to make, and which I myself made a few moments ago and which might have caused a misunderstanding had not Mr. McCormick corrected me at the time.

Mr. Reid: To the question as first interpreted to the witness, the witness answered no. When it was correctly interpreted afterwards the witness answered yes.

Mr. Fraser: I desire that the question be so formed that there can be no mistake even in the mind of an uneducated person as to the meaning of it. The desire of counsel, I presume, is nothing
547 but to arrive at the truth and not to mislead the witness.

Mr. Reid: Counsel for plaintiff states that the question was repeated correctly, was a very simple question and was answered intelligently. He has very little doubt but that the witness will answer it satisfactorily to defendants on defendants’ redirect examination.

Mr. Fraser: I would like to state that I have had no conversation with this witness with the exception of 2 or 3 instances in which this subject was not mentioned.

Mr. Reid:

Q. In the early days was the same Luis captain of Anegam and Achi? A. He was chief of Achi."

Jose Luis was chief at Anegam. Two men, one at Anegam and one at Achi. The Indian name for the chief at Achi was Kuchuhva (meaning Big Girl.) He was not Jose Luis. Luis was chief at Achi and Jose Luis at Anegam.

Examination by Mr. Fraser:

I knew Luis who was chief at Achi—he could not speak Spanish or English—then very few Indians spoke Spanish; none spoke English. About the time the railroad came to Tucson I never saw the chief at Achi hold councils or meetings. When I was older and got to be a man I go once to their meetings. I never heard the people speak of what went on in the councils then. It is just recently I heard about this suit. If Luis had tried to sell some of the land around Achi and had given a white man power to bring suit, it would be a great thing, it would be talked of very much by the Indians—I never heard of it.

Examination by Mr. Reid:

I knew Con Quien—I never met him—I have heard of him. I was a grown man when I heard that he died. I heard about the suit around the village here, and also down below. I was never over at the Sells Agency—I did not hear of a meeting there where they

talked about the sale of land. I was never at Vamori—I was
548 never at Tecolote, never at San Miguel, never at Little Tucson.

I have been to Comolic up north several times—that is in the Santa Rosa country where some of them moved to. I was present when Jose Paoli testified here this morning and heard all he said all he said agreed with my understanding of it.

"Q. That is what you sat here for, so that you could say the same thing he said? A. Yes.

Q. Have you testified to anything that was not true? A. Yes, I have told all the truth that I know.

Q. Why did you listen to what Jose Paoli said? A. To hear what he said.

Q. Did you listen to him so that you might say just the things he did, or have you attempted to tell the truth in your examination?

A. I told what I knew about this thing."

Pursuant to the first stipulation herein referred to, the deposition of **Vetol** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at the village of Cababi, Feb. 11, 1922, and contained evidence as follows:

Direct examination by Mr. Reid:

"Q. What is your name? A. Vetol.

Mr. Fraser: Now that the witness has been sworn, in view of the attempt this morning to discredit the integrity or accuracy of Hugh

Norris as interpreter, I desire to make a statement. Last autumn Mr. Kleindienst, one of plaintiff's attorneys, asked me at my office what interpreters the government expected to use in taking these depositions. I told him Hugh Norris and Jose X. Pablo. He expressed a desire at that time that some other interpreter should be employed, expressing a fear lest the connection of these two men with the government would cause them to favor the defendants in their interpretations. I promised to take up the matter with Mr.

McCormick and did so, and immediately communicated to
549 counsel for plaintiff what I heard from him, namely, that Mr.

Norris and Mr. Pablo were the interpreters used by the government in all its business and relied on by the government; that they were experienced and reliable men and that he desired one or both of them be used in taking these depositions. When the taking of testimony at Sells had proceeded a short time one or other of the plaintiff's attorneys requested that Mr. Norris be asked to be present as a check on Mr. Pablo who was then interpreting for defendants. This was done, but no correction of Mr. Pablo's interpretation was offered by Mr. Norris. Later, in view of this request by plaintiff's counsel and supposing that Mr. Norris would be more acceptable to them, I substituted him for Mr. Pablo as interpreter, and on at least one occasion when testimony favorable to plaintiff came from one of defendants' witnesses, Mr. Reid stated that Mr. Norris appeared to be giving the plaintiff fair treatment. In view of the foregoing and as regards testimony heretofore given, plaintiff has had abundant opportunity to know exactly what interpreters the government expected to use and to supply a check-interpreter of their own if so desired. With regard to testimony hereafter to be taken, I wish to state that I expect to use Mr. Norris or Mr. Pablo as convenience may dictate, and if plaintiff desires to procure a check-interpreter, I am willing to suspend the taking of testimony for a reasonable time, say until next Tuesday, until they can procure themselves one.

Mr. Reid: I will ask whether you are advised how much testimony you will take out in this country?

Mr. Fraser: Only in a general way, Mr. Reid. After
550 finishing our work today we have at least one day's work at San Xavier—perhaps a little more. In addition, as Mr. Thackeray just informs me, several witnesses have been discovered in this vicinity. Further, we have in mind several leading men whose age especially qualifies them to testify as to events 40 years ago, but whose whereabouts we have so far been unable to discover, but whose testimony I desire to take in the very near future for the fact that their advanced age makes their death possible and the loss of their testimony possible in the near future.

Mr. Reid: Plaintiff feels that it has been seriously handicapped in procuring any evidence in this case, or in the matter of cross-examination of the witnesses in this case. When plaintiff's attorneys came into the Papago country for the purpose of being present at the taking of testimony on behalf of defendants, they believed that they would have the benefit of the presence of Bonaventure-Oblasser, who, while perhaps not qualified to act as interpreter,

would be qualified and able to know when a reasonably accurate interpretation was made. It was upon this presumption that we asked, said Oblasser, to go to Sells with us, and to also furnish conveyance for us from San Solano to Sells. We were not only surprised, but placed in a predicament when, upon the next morning after our arrival at Sells we received a letter from said Oblasser stating that he had come to the conclusion that he could not in any way assist us, but indicating that he would use all his efforts in antagonism to our side of the case. This left us without either any interpreter or a conveyance of our own. We have greatly appreciated the courtesy accorded us by the officials of the government, and have not questioned the honesty of the interpreters, but

551 have felt that in many of these questions a shading one way or the other of the question put would produce answers different than the witness might intend. It was only today when there was no English speaking person who could also speak Papago, that we felt that the interpreter had made an incorrect interpretation, and we did not at the time, nor do we now, make any reflection upon the intention of the interpreter, but it was only an illustration of the advisability of having two persons present who can speak both the Papago and the English language. The further handicap in this matter to us is the fact that we had advised defendant's attorney some time ago that we had been in the Papago country and had met with treatment we deemed unreasonable; that the Indians had been advised not to talk to us, or anybody else about this case, except in the presence of the Indian Agent. We thought perhaps the ban had been removed but up to this date have not been advised that it has. We are further especially handicapped in the fact that in the taking of testimony of practically all of the witnesses their statements on the witness stand have been preceded by an interview in the presence of Mr. Thackeray, who has been connected with Indian affairs in the Papago country before, and Mr. McCormick, the present Indian Agent, Mr. Hugh Norris, who, we have understood, to be the head of the police department of the Papago country, and Jose X. Pablo, who is General Superintendent or Supervisor of the cattle interests of the Papagos, as well as the attorney for the defendants. In addition to this Father Oblasser, the Catholic Priest and head of the Catholic Mission, has been present at the taking of

552 practically all of the testimony and has shown great activity in assisting in procuring witnesses, and in view of the fact that we have no interpreter, and have not been permitted to talk with the Indians we feel that the case has not been fairly presented on the part of the plaintiff. We are at this time taking advantage of the courtesy offered by the attorney for the defendants, and ask for an adjournment until Tuesday, Feb. 14th, at noon, and will ask the attorney if he can at this time indicate the places and names of the witnesses he will examine.

Mr. Fraser: In reply to counsel for plaintiff I desire to say that much that he has said, appears to me to be quite irrelevant to the present situation, the only question before counsel being the com-

petency and integrity of the interpreter. The other matters raised have been partly explained in the testimony of Mr. McCormick, and the reason for any interference, if there has been any, with the intercourse with plaintiff's counsel and the Indians, remains to be still further developed in the testimony. I would further remind counsel that the Indians are naturally and presumably witnesses for the government and that the proprietorship of plaintiff in this land is not yet sufficiently established to give plaintiff any presumptive right to examine defendants' witnesses, those who would naturally be defendants' witnesses, in advance of the time that they would be on the stand. As to the very natural and reasonable request that counsel be advised as to the exact time and place of reconvening, I would suggest that here at Cababi at noon on Tuesday next, the 14th, bringing here at that
553 time as many of the witnesses in the vicinity as we can. I

can only conjecture how many that will be, but, presume that there will be enough reasonably to occupy that day and part of the next or all of the next perhaps. Thereafter, counsel being familiar, as we are, with the terrain, will appreciate the impossibility of fixing the time or place or naming the witnesses in the manner done in ordinary depositions, which method I understand had been departed from throughout this trip. That also I believe to be the information and understanding of plaintiff's counsel.

Mr. Reid: That is true, We know you cannot anticipate what you will have, or just what time.

Mr. Fraser: I would add that the government realizing this difficulty has been willing at all times to carry about with its own counsel one attorney for the plaintiff, and see that he had food and lodging, but that as it is well known, there are no hotels on the reservation, and the only accommodations to be had by the government's counsel is at government buildings, not designed as hotels or lodging houses, so that it is impossible, and would not be reasonable to expect that the government should attempt to furnish accommodations for more than one man, especially in view of the fact that but one counsel for the government takes part in this trip, and that this trip is for the purpose of procuring government testimony. That proposal to look after one attorney for the plaintiff will still be very willingly carried out.

Mr. Reid: Plaintiff's counsel is not unappreciative of what has been done by the government for the comfort of counsel. The inquiry as to the itinerary for the next few days is made so
554 that we can arrange and know if possible whether we should go to Quijotoa, where we have arranged for accommodations, or whether we should go to Tucson for accommodations."

(Pursuant to preceding stipulation, witness **Vetol** was recalled at 12-15 noon Feb. 13, Hugh Norris interpreter.)

I am 63 years old. Sometimes I live here and sometimes at Big Fields—I have always lived here and down there. I am a full blood Papago Indian. I got my fields from my father; I work them now at Big Fields. I was grown when the railroad came to Tucson.

"Q. Now they say that in the year that the railroad came to Tucson, Con Quien and a number of other chiefs met there and made deeds, giving away or selling to a white man named Hunter a number of tracts of land around different Papago villages—did you ever hear of that in those days? A. I never heard anything about it.

Q. They say, too, that at the same time the same chiefs gave this same white man papers that gave him the right to go into the American court and bring suit about these pieces of land—did you know about that at the same time? A. No, I don't know anything about it—they never said anything about it—they never told us anything about it."

In those days the chief did not act alone on things of importance. He had to call the people together and talk about it before they could do anything—at that time I never heard about a council being called at our village or anywhere about these things—I never knew of such a meeting—if there had been any such, I certainly would know about it, or have heard about it. Then the Papagos had houses of cactus rib—just recently they began to build houses of adobe brick—
 555 then they had very few cattle but now most of them have cattle. Then I never heard of a Papago selling his land at all. Then the Papagos plowed their fields with wooden plows. Lately they use American plows—then they reaped *thie* grain by pulling it out and thrashing it with a stick and cleaned it by throwing it from a basket in the wind—they cut it now with a sickle and use horses to thresh it. They usually use 4 or 5 of them together—one man gets on one of the horses and drives them around the stack of grain which is spread out a little—when that is thrashed they put that aside and put fresh on and drive on again. In the old days they would grind it between two rocks—the women did it—now we still grind it that way. Whoever has a field claims it as his own.

Cross-examination by Mr. Reid:

My father has been dead a long time. I have a family, one daughter, about 23, I was married when the railroad came to Tucson—my daughter was not born then—the railroad came to Tucson before the earthquake. In all my life I never heard of a council being called to talk of land matters—they sometimes talk about land but they never talk about selling or giving away some of the land—they never thought of selling the land, or any part of their land—they would not do it, they believe it belongs to them. I was never chief but I am a kind of helper around at my village. I knew Con Quien pretty well—I was old when he died—he died at Vinumkirk, at his own village—at his funeral there were people from a great many of the villages the whole village assembled—there were some from other villages. It is just a little time since we first heard about the suit in the white man's court about land. I never attended a meeting at any other town where they talked about this suit—I never was at any meeting at all—I never heard of any meet-

ing in any other town where it was talked about—If there had been such a meeting, I would know, I would hear about it—I
556 would have been just as sure to hear about that meeting as I would have been sure to know about a council meeting back when the railroad came into the country—If there was any meeting long ago I would know—just lately there is some talk.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Castro** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at the village of Cababi, Feb. 13, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Castro is my name. I am a full blood Papago Indian. I live at Iron Pipe. In my young days I lived at Achi; I am 57. When the railroad came I was living at Iron Pipe. I was a boy 12 years old when I lived at Achi. Then Nananikald was chief at Achi—he had a Spanish name that I don't know. Then there was a kind of chief at Kiacheemuck, though they didn't call him a chief, they called him Keeper of the Smoke. His business was to call the people together and come to his village or place where he selected and talk about what little things they have about their homes or about land. The chief at Achi was called Ooch—his name was Luis. A man named Jose Luis was chief at Anegam then—he was chief of their own village only. I knew Con Quien after I grew up—he was chief at Iron Pipe (Vinumkirk) he was chief there at his village—I never knew him to be considered the head chief of all the Papagos. My fields are at Big Fields—I have another at Vinumkirk. It is the custom that Papagos can take up fields wherever they wish. In the old days our houses were built of grass—recently they began to build of adobe brick. In olden times one might have, 1, 2 or 3 head of cattle or horses but now they have quite a number of cattle. Then Papagos used to plow the fields with a sharpened stick, with which they would dig in the ground a little hole and scatter their seeds—then we had nothing to cut the grain—we just pulled it out by the roots, spread it on the ground and when
557 it dried we thrashed with a stick—then the women would get a basket and fill it up and stand and wait a while until the wind blew and they then would throw it out and that blew the chaff away—they used two rocks to grind their wheat—we still have them.

Cross-examination by Mr. Reid:

The reason I changed my residence from Achi to Iron Pipe I saw the land at Vinumkirk and I liked it and I moved over there to make a field about the time the railroad came. The Smoke Man at Kiacheemuck was Viindat—I did not know his Spanish name. These men I have named as chief of these villages were chiefs before the railroad came to Tucson. Vinumkirk is the same village as Quijotoa—it is also the same village as Quitac. Con Quien was chief at Vinum-

kirk, Quijotoa and Quitac. I think I have a good memory excepting for years, I cannot remember years. I don't remember anything about a white man by the name of Hunter being given the right to represent the Indians and protect their land for them. I don't know of any agreement. I know Tom Day—he never told me of such a matter 8 or ten years ago. We believed that the grass houses in the old days were good houses—they were good for this kind of climate—they would last a long time if they were repaired every year or every 2 years. These houses were built in the same places that the present houses are—some of them moved a little way from where they were but mostly they are in the same places. As I said a while ago Con Quien was chief of his own village. Quitac was a large village—there is nobody living there now—they moved to Vinumkirk, to Big Fields. It is just a little way from Vinumkirk to Quitac—it is just a little way from Quijotoa to Vinumkirk. The reasons the Papagos ceased to use grass houses and started to move in adobe houses is the young people seemed to want to live in better houses than in the olden times and another thing we have not had as much rain as we used to have and there is usually no grass to make grass houses of.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Juan** was duly taken on behalf of Defendants through 558 Hugh Norris, interpreter, at the village of Cababi, Feb. 13, 1922, and contains evidence as follows:

Direct examination by Mr. Fraser:

Jose Juan is my name. I live at Kiacheemuck—I was born here. I am a full blood Papago; 67 years old. I saw the railroad when it came past Casa Grande—then I was about 24 years old and Nananikald (meaning Bat) was chief at Kiacheemuck—I don't know his Spanish name if he had one. Luis was chief at Achi. I don't know who was chief at Akchin—Jose Luis was chief at Anegam then.

"Q. Was one of these men chief of more than one village? A. He may be, of course, I don't know if he was or not."

I knew Con Quien—he was chief at Vinumkirk. I don't know whether he was chief of more than one village. Maybe he was chief only at Vinumkirk.

"Q. Do you know whether all the Papagos considered him head chief over the whole Papago country? A. I don't know."

Cross-examination by Mr. Reid:

Nananikald died many years ago. I don't think there was anybody chief after him. Luis who was chief at Achi is dead—nobody succeeded him. Jose Luis, the old chief of Anegam is dead nobody succeeded him. I don't know who the chief is at Akchin now. I cannot name any man who has been chief of Akchin, as I don't know. I don't know of any other chief of these villages other than Nananikald and Luis—those are all I remember—I cannot tell just

when they died—I don't know when they became chiefs they were chiefs when the railroads came.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Luciano** was duly taken on behalf of Defendants, through Hugh Norris, interpreter, at the village of Comobabi, February 13, 1922, and contained evidence as follows:

559 Direct examination by Mr. Fraser:

Jose Luciano is my name. I am full blood Papago; I live at Akchin—I have lived there all my life—I am acting chief right there.

“Q. How long have you been acting chief?”

Interpreter: He wants to know how long since the railroad passed Tucson.

Mr. Fraser: It is 40 years.

A. I have been chief before that time. I was a grown man then. Then Nananikald-Vuupkam was chief at Kiacheemuck—then Big Girl was chief at Achi—I don't know the Spanish name I knew him by the name of Gue-Chibia and Hudunyik-Shon was chief of Anegam. I don't know his Spanish name.

Q. Was any of these men at that time chief of more than one village? A. They listened to each other.

Q. Were you chief of any other village beside Akchin at that time? A. That is the only one.”

Each was chief of his village only. I knew Con Quien—he was chief at Vinumkirk.

“Q. Was he chief of any other village besides Vinumkirk? A. He was chief only at that village.”

“Q. They say that in the year the railroad came to Tucson, Con Quien and the chief at Achi and a great many other chiefs came together to Tucson and had a meeting and gave a paper to a white man called Hunter, which gave him a half interest or right in all the land around Achi, Akchin and these villages. Did you hear of the meeting at that time? A. No, I never knew of any meeting.

Q. Did you ever meet at Tucson at that time with Con Quien and other chiefs? A. No, I never did.

Q. If there had been a meeting like I have mentioned, would you have known about it? A. They never talked about any land sale. Of course they have meetings but they never talk about that.”

560 They never had such a meeting. It was Papago custom for them to call council to consider it—the chief at that time could not sell or give the land around a village away without first calling a council—they could not give away the land that belonged to them. I never heard about such a meeting to give a white man the right to bring a suit in court about this land around Achi and Akchin. Then the houses of Akchin were made of grass. They had not any cattle in those days. Recently, I have heard talk about this

sale of Papago land and this suit in court. I never knew it before—I heard it from the people around here—there was much talk about it. They inquired among themselves if anybody ever knew about it before—they did not seem to know. I never heard of any Papago who had heard about it in the early days. The people of Akchin call their village Akchin—there is no village near there they call Santa Rosa—the Mexicans call it Santa Rosa. The people around Akchin claim to own the whole country all up around this way and this way and this way.

“Q. Do you mean that all the Papagos claim the whole country?
A. Yes, all of us that live around here.

Q. In the old days did Akchin claim that there was any boundary line between it and any other village? A. No, they never believed that there was any boundary around it.”

When a Papago wants to move and take fields at other places, they don't have to ask anybody—if they see a field they take it up. I became chief because my father was a chief—I don't know the Papago custom for choosing their chiefs. In the old days a house would be destroyed if one died in it—they don't do that now—several people have died in my house and it is standing yet. In the old days there might have been a few who talked Spanish—now there are quite a number of them—none could speak English. I don't speak Spanish.

561 Cross-examination by Mr. Reid:

I am about 70 years old. My father was not living when the railroad came through. The people of Akchin come here to Comobabi when the water gives out. It takes about a day to drive here. From where we sit here at Comobabi the Papagos own the whole country to the east of us. I don't know of any place called Oximo. When the water gives out in the valley the people bring their cattle up here to Silynarki and Comobabi—some of the older cattle come without being driven—after the cattle have been driven up they stay here—we never drive them back. I knew Bishop Salpointe—he was living at the Mission when the railroad came to Tucson—the Mission is the same as Tucson. I never went in with other captains of other villages to see Bishop Salpointe. I never heard of any captains going in there to see him—I never knew of any of them going to see him.

“Q. You say the chiefs on important matters listen to each other do they? A. Yes.

Q. And when there was a matter affecting the people of all the country, would the chiefs of the villages get together and talk about it? A. Yes, they would talk about it and settle it one way.

Q. And when they would meet, would there be one man who was head chief? A. Yes.

Q. Did Con Quien act as head chief sometimes when you would have meetings of that kind? A. Yes, sometimes.

Q. Who became chief at Vinumkirk after Con Quien died? A. Tonto Ox (Meaning Crazy Woman).

Q. Since the government has put an agent over the Indians, does not the Indian Agent of the government act as head man of all the Papagos? A. Yes."

Since the Indian Agent has been here the chiefs had a meeting at Vinumkirk—all the chiefs came—the agent was not there—this man Con Quien was the head man at the meeting at Vinum-
562 kirk. That meeting was because they were going to be given something in Tucson. The agent had just come in there and we were going to get some calico.

"Q. Was that the last meeting that you remember of where all the captains came in and you had a head chief? A. Yes, that is the last meeting I remember.

Q. If there had been any more general meetings of the captains and the head chief, you would have known it, would you not? A. Yes."

Just recently I heard about this land matter and this case in court. It was maybe three years ago. We never believed that any such thing would happen. I was at Sells once—it was the time that this young lady was there acting as reporter in this case—I saw her there once and she was doing the same thing she is doing now—that is the only time I was there.

"Mr. Reid: It is stipulated that this was in January, 1919.

Q. Was it at the time you visited Indian Oasis that you first heard about this suit and about the alleged sale of the lands? A. Yes."

The Mexicans call all the villages located around Kiacheemuck. Santa Rosa. Our people claim to own the whole country that the Papagos live in, including the country between the summer and the winter villages, and we believe that it has always belonged to us since the earth was created and we believe we will always own it and we want it to be that way.

Examination by Mr. Fraser:

We believe that the Papagos own the country as far as the mountain on the east and the people living on that mountain believe that some of the land on the other side belongs to them—they also own the land on the other side of the mountain to the west far away, as far as the people are scattered beyond, they believe it is their land.

563 "Q. You said that when a matter came up that affected the whole country, the chiefs got together to talk about it. Since you were a chief, did they ever get together to talk about selling the Papago lands? A. No, they never talked about it.

Q. Did the chiefs of the villages ever get together and choose Con Quien as chief? A. Yes.

Q. When did they get together? A. Long ago, I don't remember just how long ago it was

Q. Were you with them? A. No, I was not.

Q. How do you know that they got together and chose him as head chief? A. I don't know about it, it was a long time ago.

Q. Did you only hear about it from others? A. Yes, I just heard about it."

Pursuant to the first stipulation herein referred to, the deposition of **Pablo Comobabi** was duly taken on behalf of Defendants through Hugh Norris, interpreter, at the village of Comobabi, February 13, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Pablo Comobabi is my name. I am a full blood Papago Indian—sometimes I live here—sometimes at Akchin. I was born and raised right around here and I am about 80 years old. I was grown, married and had children when the railroad came to Tucson. I have been a member of the council at Akchin—I sometimes speak and try to lead.

"Q. In the year that the railroad came to Tucson who was chief at Akchin? A. The old man you were just talking to.

Q. Is that Jose Luciano? A. Yes.

Q. And at that time who was chief at Kiacheemuck? A. That man Nanankimald-Vuupham."

Big Girl was chief at Achi then, and Hudunyik-Shon was chief at Anegam—each was chief of his own village—then the chief did nothing of importance affecting the whole village without calling a council. I never heard or knew about a time that Con

564 Quien and the other chiefs at Tucson gave a white man a paper that gave him the right to bring suit about land around Achi. There was never a council meeting called to talk about that or selling any of the Papago land—if there was I would know about it. It is not very long ago that I first heard about this sale and this suit—there has been much talk about it since we first heard it. There is no one who seemed to know anything about it until the government men told them. In speaking of my village to other Papagos I never use the name Santa Rosa—the Mexicans would call it Santa Rosa and they might mean Achi—the Mexicans would call all of these little villages here Santa Rosa. I have a few fields at Achi—they belonged to my father—I got them from him. It is the custom that when a man dies his son gets his fields. According to Papago custom the chief of any village has not the right to sell the fields or land around the village. In the old days the Papagos around Akchin had very few horses and cattle—their horses and cattle ranged anywhere they pleased in the Papagos country.

Cross-examination by Mr. Reid:

I am about the same age as Jose Luciano.

"Q. What did you hear about the land when you first heard about it? A. I heard the land was sold to somebody.

Q. Did you hear that all the land had been sold to somebody?
A. No, I don't know just how much was sold.

Q. Did they tell you who had authority to sell the land to somebody? A. No, I don't know that.

Q. Did they tell you anything about Con Quien having anything to do with this matter? A. No, I never heard anything of that.

Q. Did you know Con Quien? A. I knew him."

I never attended any meeting where the chiefs would meet
565 with Con Quien. I never heard of any meeting where the chiefs would meet with him—I don't know—he lived at Quijotoa—he was a chief, he may have been a head chief and he may have been head chief of all the captains of all the villages—that is what I understood. It may be about 2 years ago that I first heard of this land matter—I first heard of it at Sells—I was there with Jose Luciano when he heard of it. This lady taking this testimony was there—that is the first time I was there. I heard of this land matter before a little less than 10 years ago—I heard a good many people talk about it. I was right around here when I first heard of it. I heard the people talking about it then, but I don't believe it.

Pursuant to the first stipulation herein referred to, the deposition of **Barnebe Lopez** was duly taken on behalf of Defendants, through Jose X. Pablo, interpreter at San Xavier Mission, February 15, 1922, and contained evidence as follows:

566 Information for printer only: There are no pages 363, 364, 365, 366, 367, 368, and should be numbered consecutively.

567 Direct examination by Mr. Fraser:

(At plaintiff's request, Mr. Fraser excluded all witnesses from the hearing until after each had testified.)

Barnebe Lopez is my name; I am a full blood Papago, I live and am chief at San Pedro. I am 59 years old, and have been chief 5 years. I used to live at Pautak or Coyote. When I was a young man I lived at Quijotoa—then I used to go to Achi or Kischeemuck once in a while. I remember when Luis was chief at Achi, I remember when the railroad came to Tucson—Luis was chief at Achi then. I remember Con Quien—he was chief at Quijotoa and at no other village—he was not head chief of all the Papagos—Luis was only chief at Achi. According to Papago custom if I, as chief of San Pedro, learn of some matter that is important to all the Papagos, or to several of the villages, I would have power to call a meeting of chiefs—any Papago chief has the same power—it was the same way in the old days when the railroad came.

"Q. They say that in the year the railroad came to Tucson Con Quin and Luis and many other Papago chiefs met at Tucson and gave a white man a paper, which gave him, or sold to him half of all the Papago lands—did you ever hear of that at that time?
A. No, I never heard about it

Q. They say that at the same time this same chief gave this same white man a paper that gave him the right to go into the American court and bring suit about the Papago land—did you hear about that at that time? A. I never heard about it, I would have known about it if there was anything in it."

According to our custom a chief could not do any-thing of importance affecting the whole people or the whole village without calling a council of the village together. He had no power to act without seeing his people about it. There was never a council
568 held at Quijotoa, while I was living there, about this matter that I have just mentioned. They used to gather and hold councils there but they never talked about land matters. If there was any thing said about land I would know about it. I have never known of any Papago selling his land. Chief Luis of Achi was only chief at Achi—he was not head chief of any villages—it is the same way with other villages—they are chiefs of their villages only. I have fields close to San Pedro—they used to belong to my father but he left it and I took it up. When a Papago dies his fields are usually taken care of by somebody left. A chief or the other people of the village have no say on a man's field—the work belongs to the one man—this was also so in the old days—it has been probably 4 years since I first heard about this sale of Papagos' lands and this suit. A man told me who could speak English—he was not a government man but a Papago who could speak English. When I heard about this I took it upon myself to try to find out something more definite about it but I never had any knowledge of it from anyone. I never found a Papago who, had heard about this matter before.

Cross-examination by Mr. Reid:

I have lived at San Pedro 23 years—I moved there and dug a well there myself—I was the first man to move there. I became chief just 5 years ago.

"Q. Who was chief before you at San Pedro? A. Jose Luis was chief—he was also chief at Coyote.

Q. You are the same people at Coyote and San Pedro? A. Yes."

My fields are down below in the valley—we just call it Oaidk. The people of Quijotoa do not have their fields there—they have fields down where they are. My father had fields at Quijotoa only—he still has it and farms it each year—I am his oldest child—my father helped me fix up this field. Con Quien was living
569 at Quijotoa when I was living there. When I was a boy they used to have meetings of all the captains there at Quijotoa—Con Quien used to send out to them to come—they would almost always come and when he would ask them to do something they would do it. Con Quien was a very prominent leading man but we don't think he had so awful much power—he was known all over the Papago country. We never heard of him and the other captains coming to Tucson and San Xavier in the early days about the time

the railroad came. I never heard of Con Quien and the others coming in at any time after the railroad came to Tucson—if they had come to Tucson or San Xavier then I would know about it and whatever they would talk about I would know about it, but I never heard of a meeting of chiefs with Con Quien at Tucson or San Xavier—no chief would have made any arrangement or contract relative to land or the sale without first consulting with his council—he could not do so without his people.

“Q. Should a man who owns a field die without leaving any children or relatives, could any man of that village go and take up a field without permission of the chief? A. Yes, he would go to the chief about it and he would only let him know that he was thinking about taking up this land, or if the chief was not there he would go to some people of the village because they would have the same right.”

The Papagos believe that they own all the lands in what is known as the Papago country and they believe that they have always owned this land and that they should always own it in the future—they think this because they have been born and raised there. We think that nobody could take it away from us. No one could take up fields and settle in the country unless he was an Indian.

“Q. Do you remember when the government, some years ago, attempted to compel the Indians to take allotments? A. Yes, I remember that the Indians would not do that with them.”

570 A few of the Indians would take allotments but most of them would not. Joaquin was the name of the Indian who first told me about this land matter with Hunter. He is dead—he lived at Vinumkirk or Quijotoa—he told me that there was a time coming when some people would come in here and would want to claim our land. He asked me if I knew anything about it—I did not ask him where he heard it—I worked diligently to find out about it because we don't want this to be so—I went to the Indian agent about it—he told me that he had not anything very definite on it, but to go ahead and live on my land and take care of my fields. This conversation was at Sells—there was no meeting—I went myself. I heard about the meeting at Sells but was not there—I heard about it after the meeting because I was living down at Mesa. I was chief at San Pedro then. This conversation with this Indian was before my trip to Mesa. I did not know Tom Day who had a store in the Quijotoa country—I heard that there was a man at the store in the Quijotoa mountains—that was after I had left Quijotoa. Even up to now I have never been to that store.

“Q. Do they believe that this suit in court is for the purpose of taking their land away from them? A. No, they don't believe it that way, because it seems that they know that this is not true.

Q. What do they think the suit is about in court? A. Well, sometimes there is a plain case. Sometimes it is very plain and they

have to go to court over it. But this, since they know nothing about it, they would not be holding court over anything like that.

Q. Well they are holding court over it, and what do they think the people are trying to do about it? A. Well, they think *think* the same that I do. They have nothing to show from a good many years back that there is anything they would have court over and of course if there is anything they could go ahead and hold court over it."

571 "Q. If the government should attempt to deny the Indians their ownership in this Papago land, then you think that matter would go into court, do you? A. Well, they would have court over it because we would hold on to what we know is ours and if the government wishes that we go to court over it, then we will go to court over it.

Q. That is, if the government should say that it is not yours, then you are willing to go to court and find out whether it is yours or not, are you? A. Yes."

Examination by Mr. Fraser:

Coyote is close to San Pedro.

"Q. You spoke about Con Quien holding meetings. If any other chief besides Con Quin sent out word for a meeting of chiefs, did the other chiefs come? A. Yes, if any other chiefs wanted to meet him he would come to his meeting.

Q. And if the chiefs at any meeting of that sort decided on anything, they did it, was that the Papago custom? A. Yes, they would usually do it—that is the reason of the meeting.

Q. Was Con Quien able to give orders to other chiefs? A. Not any more than others. It was the same way with others—whenever they met and talked about something and agreed, they would carry it out just the same."

There are no boundary lines between one Papago village and another. I know of some land that has been left out of Achi, but among them there is no dividing line. No people of a village ever say that the people of another village must not range their cattle nearby—cattle all mix.

Examination by Mr. Reid:

We have no fences except around cultivated fields. Only the gentle teams that work are kept around the place close. If
572 the unbroken horses go any place to some other village, we will take care of them just the same as if they were our own. We send them word that we have their cattle down there and they come and get them.

Pursuant to the first stipulation herein referred to, the deposition of **Toribio Aragon** was duly taken on behalf of Defendants, through Jose X. Pablo, interpreter, at San Xaxier Mission, February 15, 1922, and contained evidence as follows:

Toribio Aragon is my name. I am 69 years old. I live at San Xavier, and have lived here all my life. I am a full blood Papago Indian. I was here when the railroad came to Tucson—Ascension Rios was chief of San Xavier then.

"Q. They say that in the year the railroad came to Tucson, Ascension Rios, Con Quien and a number of other chiefs met at Tucson and gave a white man, called Hunter, a paper that gave him the right to half of the Papago lands around San Xavier and many other places in the Papago country—did you hear of that at the time? A. I know nothing about that.

Q. They say that at the same time they gave this same man Hunter another paper that gave him the right to go into the American court and bring suit about this land—did you hear about that? A. No, I never heard anything about that."

In those days when anything of importance came up it was the Papago custom for the chief to call a council to discuss it—I never heard of any council about these matters, I knew Con Quien—he was chief at Quijotoa—I don't think the Papagos took him to be head chief. If there had been any council about this sale of the land and bringing suit, it is a thing the Papagos would talk about—I would have heard of it if there had been any. In those days I knew Teodora Trojel—she was a Mexican—she could not speak Papago—she was not a good woman—the people of San Xavier did not like her very well because she was known not to tell
573 the truth.

Cross-examination by Mr. Reid:

Con Quien used to come to San Xavier once in a while—he never brought any captains of other villages with him. I don't know about any meeting with Con Quien out here at San Xavier. I don't think any of the chiefs ever came here and brought the other chiefs—if they had I would know about it and I would remember it but they never had a meeting here—I would remember it if I were only a boy about 14 or 15 years old. There never has been any meeting of our people held to talk about selling any land at any time—if there had been any such meeting I would know about it. They never had a meeting about renting our lands—if there had been such a meeting I would know about it—the people would talk, they would not like it. I never knew about the council of our people and the chief ever meeting at Tucson and talking about selling some of our land to the railroad company. If there had been any such meeting I would know about it. I never heard of a meeting here at Ascension Rios' house to talk about selling to the railroad company a right of way for the railroad—if there had been such a meeting I would know about it. It takes 2 days to drive from here to the Quijotoas with a team—I have no idea about miles—I took a drive over there once with a team and it took me 2 days—I took a load of women—I rested the horses at night.

"Q. Was it Mrs. Berger who lived out here who did not like Teodora? A. Yes."

There were none who liked her because they thought she was a Mexican. She would claim, herself, that she was half Indian, but she was not. I do not know Chico Tijeras—I do not know who her mother was either. I used to work for Mrs. Berger and I heard Mrs. Berger say that Teodora was not a good woman. Teodora was not a Catholic—she did not have a good way—I never talked
574 to her—I never tried because I know she would not understand—because she did not understand Papago. I never went to her house—I never had anything to do with her. I know she could not talk any Papago because she was never heard to talk any Papago, because she was not Papago, she was Mexican. I did not talk Spanish. None of the men in the old days talked Spanish.

“Q. Would not Ascension Rios interpret from Papago into Spanish in early days? A. I never heard about that.”

Ascension Rios became chief after he came back from the trip to the President at the time when they made a peace treaty with the Apaches. There was a railroad then. Francisce Rios became chief next—he is dead—then Carlos became chief—he is still living—he is not chief now—he is nothing. Pablo succeeded him—Pablo is dead. Jose Rios succeeded Pablo, he is dead—Juan Marcos succeeded him. There was no other Indian in San Xavier named Ascension Rios besides the chief I spoke of. I never was chief. They sent for me to go to council but I never say anything. I am always a good listener to the speeches that the council make, I have never taken much part in the affairs of the village. All my life I have been a farmer.

Examination by Mr. Fraser:

Teodora did not go around the people of the village here very much—she did not live here—I mean that she did not belong here but she lived over there at the house where Carlos lives now. I heard others beside Mrs. Berger talk about her—the people knew she was not truthful and no one listened to what she said. Ascension Rios knew Teodora well—he did not like her either—he would not have her do any interpreting for him because she was not a good person, she was not a truthful woman. I cannot name any other one person that I ever heard speak badly of Teodora other than Mrs. Berger.

575 “Q. Did you hear much talk about Teodora being a truthful woman, or not, at San Xavier? A. Yes, I heard it.”

Pursuant to the first stipulation herein referred to, the deposition of **Andreas Castillo** was duly taken on behalf of Defendants through Jose X. Pablo, interpreter, at San Xavier Mission, February 15, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Andreas Castillo is my name. I live at San Xavier; am a full blood Papago Indian; am 58 years old. I was born at Achi. I was a good

sized boy when I left there and came to live here. I remember when the railroad came to Tucson. I was living here then. My father had a field at Achi—I took up a field here. I have a few cattle at San Pedro—they are grazing there—I have no fields there. When I lived at Achi, Guo-Chihia (Big Girl) was chief there. His Spanish name was Luis—he is dead—he was chief only at Achi. I was not old enough then to know, but I had heard they had chiefs, each village had chiefs. Ascension Rios was chief here when the railroad came. I knew Con Quien—he was chief at Vinumkirk—the Papagos never considered him chief over all the Papagos. Each village had its chief and at Vinumkirk they had their chief. I never heard about this meeting of Luis, Ascension and Con Quien at San Xavier in 1880 to sell land or give rights to bring a suit. In those days it was Papago custom to call council for such matters. I never heard or knew of any such council—if there had been the Papagos would talk a good deal about it because this land belongs to them—the first I heard about it is about 4 or 5 years ago—I heard it from the Indians talking among themselves about it, saying that there were some white people going to take a part of our land. There was much talk about it.

“Q. Did you ever hear of anyone who knew of this meeting in Tucson—this meeting I have just mentioned? A. Well, I heard
576 of a meeting there sometime ago—he told me this, that there was a man who was offering \$100.00 for a signature—that is what I heard.”

I never have been able to find anyone who knew anything about the meeting in the old days. Teodora Trojel used to live at San Xavier over there and people around said she was not truthful—they would not listen to her or have anything to do with her—the people here know her; she was a Mexican woman; she did not talk Papago. I have heard people talk about her—they said she was noted for telling false stories. I have been leading man or attended meetings at San Xavier for about a year. I usually speak of what is good and never of what is bad.

Cross-examination by Mr. Reid:

I knew Con Quien—he was chief at Vinumkirk when the railroad came in—I was a young man then, just growing. I never heard of any kind of a meeting concerning the disposal of land in those early days—we never had any trouble here at San Xavier with the Mexican people trying to live here—it might be that the Papago people did not like the Mexicans. Teodora was a Mexican woman. For that reason and for the reason that she was not truthful we did not like her—she did not know any Indian language—I used to go to her house and talk to her in Indian, but she would always talk in Mexican. I understand Spanish a little—I could tell what she was talking about. In those days there was some few that may have understood a few words of Spanish but not very well. I could understand part of what Teodora said. I did not pretend to understand all because I knew very little Spanish. When

I spoke in Papago she never knew what I was talking about—she would always talk about something else and not what I was talking about—I could not understand very well what she said in Spanish. When she talked and made motions, I would sometimes understand. Nowadays I do pretty well in Spanish, when I go to trading I make myself understood. I think Ascension Rios understood a little Spanish because I have heard him talking a little Spanish once in a while. All I know about this Hunter matter and this suit
 577 is that it is a suit to take a part of our land away. About 7 or 8 years ago some white man sent for me and asked if I knew Teodora—if I knew she could talk Indian or who she was, and I told him she was a Mexican woman and she could not talk Papago and could not even talk English. She could talk Mexican.

“Q. You have always since that time thought that Teodora had something to do with this sale of Papago land, have you not? A. The way I have been thinking about it—I don't think she ever had anything to do with it—because I don't know how it would be possible, because she could not do any interpreting.”

I never saw Con Quien here, or any place with so many chiefs. I don't know who takes care of my father's former field at Achi. Anybody could take it up as it belongs to all the people there. No one gave me permission to take up my field here. I did not have to ask permission of the chief at San Pedro to keep my cattle there. I think he thinks the same way that I do that the land there belongs to all the Papagos, and I am a Papago. In the old days the Papagos did not have as many cattle as now because of the Apaches. If the chief at San Pedro should tell me to take my cattle away from there I would do it.

“Q. Has the chief of any village the right to tell the people where they must range their cattle and where they must not range them? A. No, he just leaves them alone about that.”

Pursuant to the first stipulation herein referred to, the deposition of **Refugia Fernando** was duly taken on behalf of Defendants, through Jose X. Pablo, interpreter, at San Xavier Mission, February 15, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Refugia Fernando is my name. I live here at San Xavier. I am a full blood Papago Indian. I came here when I was a little girl.

When the railroad came to Tucson I was living here—I was
 578 here when Ascension Rios was chief—I am his widow—Teodora Trojel was living here then—she lived here for some time—all the people here knew her—she could not speak Papago because I used to go to her house often—I worked there for her and I never heard her talk Indian—she never tried to speak Indian to me—she talked to me in Spanish—the people around here believed that she was not a woman to tell the truth—she sometimes lied. I heard the people here talk about her as not being a truthful woman.

Cross-examination by Mr. Reid:

Ascension Rios was married before he married me. I am much younger than he was. I went to Mrs. Berger's often—I never worked for her but I went there—she was my godmother—I heard from her that Teodora could not tell the truth and from the Indians around the village here. Mrs. Berger and Teodora were not friends because Teodora was a liar. In those days the Mexicans were driven off by the agent. None of the Mexicans told the truth and maybe that is why all the Papagos believed that all Mexicans were liars. I believe that Teodora was a Mexican and for that reason she never talked Indian—they say she claimed to be half Indian and that is another reason that the Indians did not like her. I did not know Chico Tijeras. I did not know Teodora's father. I never knew of my husband, Ascension Rios, and Teodora to go together any place to attend to business. I washed for Teodora.

"Q. She never told you any lies, did she? A. She might have told me a lie but I did not understand her much."

Examination by Mr. Fraser:

Mrs Berger was a Mexican and I did not dislike her.

"Q. You said that Teodora's reputation was that she told lies and you said you believed that all Mexicans told lies—was there any other reason for thinking that Teodora told lies? A. I know that Teodora was lying—that is why they tried to drive out Maria (Maria M. de Burger.) Pretty near all the people at the
579 village believed that Teodora was not telling the truth.

Examination by Mr. Reid:

I was on Mrs. Berger's side of the fight and whatever she said I believed because she was in the habit of telling the truth about things. Mrs. Berger said Teodora was not truthful, and everybody said so.

Pursuant to the first stipulation herein referred to, the deposition of **Antonio Moreno** was duly taken on behalf of Defendants through Jose X. Pablo, interpreter, at Tucson, Arizona, February 16, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Antonio Moreno is my name; I live at Bac (San Xavier). I think I am about 44 years old. I am full blood Papago Indian. I was at a meeting at Sells about 4 years ago where the subject of this suit was discussed—there were a number of Indians present from the different villages around the reservation. Some of the government employes told me about the meeting. Mr. Bowie and Mr. McCormick spoke at the meeting—that is all. They were asking the Indians if they knew of certain happenings years back—one thing, if they knew of some Indian land that had been sold. They

never told me anything about a suit in the white man's court about the land—the Indians know nothing about it—the Indians chose a committee to investigate—they told me to serve on that committee. I gathered all the old men of my village and told them what had been talked about—they never heard or never knew anything about this matter. I went back with Victorano Chico, Nestor, and Jose Maria to Sells Agency to talk to Mr. Bowie and Mr. McCormick. We all said the same thing that we worked diligently trying to find out about this matter but could not. I have talked off and on whenever I had a chance to my people about it but so far I have never been able to find out anything. Just last week I had another meeting with my people. There are a few old men living yet and 580 they were there, but they knew nothing about it. Since 1918 the people at San Xaxier talked a good deal about this matter at first, but later they have kind of quieted down.

Cross-examination by Mr. Reid:

Some of the old Papago men forget very easily—they are getting old and it is easy for them to forget sometimes.

"Q. You told them that the question was whether they had sold this land back a good many years ago? A. Yes, that is just about my question."

I did not say that we were not told in 1918 about a suit in the white man's court. They told me that there was going to be a law suit over that land, but they did not know just when it would be—I suppose it had been filed or commenced, that is the reason they were trying to find out something—they explained that that suit was to take away part of the land from the Papagos and that is what I told the people. They all said they had never heard any such thing. The Papagos are very fond of their land—they are very jealous in their rights. There is nothing they think more of than their land because they get their food from their land, which is first, they never want anybody else to take their land. When I talk to the Indians here they listen like they were interested. So did the Indians at Sells.

"Q. And did you ask any of them whether they knew of any Indian having given authority for this suit in the white man's court? A. Yes.

Q. Did you find anyone who knew of any Indian having given that authority? A. No, there was no one.

Q. You say that the Papagos are very jealous of their rights in their lands? A. Yes.

Q. And if a suit should be started relative to their rights in their lands, would they not want to be protected? A. Yes.

Q. You believe, and the Papago people believe, that you have absolute ownership in all the lands in the Papago country, do 581 you not? A. Yes, the country belongs to them, as they believe, for many years and it is understood by many and is known as the country that belongs to the Indians.

Q. If a suit should be started in court to protect these rights that you claim, would you not want the court to try the case and render a judgement protecting you in your rights? A. Yes, if any man was interested enough to go into court and protect our rights, we want him to.

Q. You want your title to your land so fixed that it cannot be taken away from you, do you not? A. Yes.

582 "Q. You don't want even the government itself to be able to take away the Papago land that belongs to the Indians, do you? A. No, the government I don't think is thinking of taking away any of our land, as it was the government that set aside this land for us and it seems that the government itself holds its men over us and protects us.

Q. In making the reservation for the Indians, you think that was an act of the government that gave you title to your land? A. Yes, that was the plan, that is the way we wanted it and they set aside this reservation and no white man has a right to go there because it belongs to us.

Q. And you think that that act of the government confirmed the title in the Papago people forever, do you? A. Yes, that is the way it is and that is the reason we are living on this land now.

Q. You have always lived on the land, have you not? A. Yes, I have always lived there because it belongs to me.

Q. And the Papago people from time immemorial have occupied this land? A. Yes.

Q. And from time immemorial they have had their villages where they are now? A. Yes, ever since this earth was made, the Indians have lived on this land and the white people have come in there and taken up their land and that is why we have to live where we are living now.

Q. But you have kept the white people out of the Papago land have you not? A. Yes."

Pursuant to the first stipulation herein referred to, the deposition of **Mary C. Moss** was duly taken on behalf of defendants, at Roadside Mine, between Tucson and Sells, Arizona, February 17, 1922, and contained evidence as follows:

583 Direct examination by Mr. Fraser:

I live at Roadside Mine. I am a housewife. From 1862 to '82 I lived on the road 7 miles from San Xavier. My father was a miller. In the course of that occupation I came in contact with many of the people at the Mission, Indians and all. The farmers brought their wheat to the mill to sell or exchange for flour. I knew Teodora Trojel at the Mission—I saw her quite often and her husband came to buy or exchange his wheat. Amongst the Indians and the Mexicans I heard people talk about her to each other—I thought she was a Mexican—I never heard anybody say that she was half and half—I don't think she was a Papago—I never heard her speak Papago. I have seen her about with the Indians when they happened to be at the mill together. I never heard her attempt to speak Papago to

any of them—she always spoke Spanish—I never heard her talk to the Indians. I heard that her reputation in San Xavier was not good as to her chastity.

Cross-examination by Mr. Reid:

I don't know her reputation for truth and veracity in the community—I know her husband, he was not a Papago, he was some foreigner—I did not know her father. I speak Spanish. You could always tell a Mexican from a Papago, in those days especially. I lived about 2 miles from Tucson—that would make 7 miles to the Mission. There was a good deal of feeling between the Mexicans and the Papagos in those days. But toward this woman they all had, to a more or less extent a hard feeling—she did not get along with the Mexicans, or the Papagos either. Her husband was not in charge of any of the government work there that I know of—he had been ex-Mexican war soldier.

Pursuant to the first stipulation herein referred to, the deposition of **Jose Petaro** was duly taken on behalf of defendants, through Hugh Norris, interpreter, at the village of Silynarki, February 584 17, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Jose Petaro is my name. I live at Silynarki. When there is water I live in the valley in a part of Achi. I am acting chief of Achi and Silynarki now. I am 47 years old. I can remember 30 or 36 years back. The chief at Achi was chief only at his village. The chief at Kiacheemuck was chief there only and so it was at Akchin and Anegam.

"Q. A witness testified recently that at times the chief at Achi would call meetings of all the four villages that I have named and would preside there at those meetings—have you known of anything like that in your lifetime? A. I don't remember of any meeting of all chiefs—if there ever had been I would remember it."

Within my recollection when things of importance came up they would meet at their own village. As Keeper of the Smoke at Achi I call the people together, as many as I find, and talk about things. As far back as I can remember there has never been any dividing line between Achi and any of the neighboring villages. Cattle roam where they please and no one's permission need be asked.

Cross-examination by Mr. Reid:

"Q. Are the villages of Anegam, Kiacheemuck, Achi and Akchin known and referred to as Santa Rosa? A. Yes.

Q. Where does the village of Anegam have the winter homes of the people of that village? A. They go kind of west.

Q. Do they go west to the mountains? A. Yes.

Q. Do some of them go north to Comolik? A. Yes.

Q. Where do the people of Achi go for the winter? A. Right here at Silynarki.

Q. And where do the people of Akchin go for the winter? A. They go to Comobabi.

Q. And where do the people of Kiacheemuck go for the winter? A. They go to Covered Wells."

The people of these 4 villages claim the whole Papago country as their land, and the cattle go anywhere. These 4 villages are pretty closely associated, all friends and neighbors, and the school at Kiacheemuck is a school for all the children of these 4 villages. I never knew of any meeting of these 4 villages together. I know the captains of these villages but I do not meet with them to discuss matters. When Papagos are speaking to each other they call the place Achi, not Santa Rosa. Papagos can go any place in the Papago country and take up unoccupied lands and they can range their cattle where they wish.

By Mr. Reid:

"Q. In speaking among yourselves of these four villages, do you not refer to that group of villages as the Santa Rosa villages? A. We would call it Achi.

Q. Do you call it Achi for all four villages? A. The villages around Achi have different names.

Q. Yes, but when you speak of them altogether, do you not speak of them as Santa Rosa? A. No, we would never use the term.

Q. Do you use that term when you speak to Mexicans about it? A. Yes, we would use that then, Santa Rosa."

Pursuant to the first stipulation herein referred to, the deposition of **C. B. Guittard** was duly taken on behalf of defendants, at Florence, Arizona, Feb. 18, 1922, and contained evidence as follows:

Examination by Mr. Fraser:

C. B. Guittard is my name. I live at Glendale, California, close to Los Angeles. I am 46 years old. Mining is my main occupation—I am not a civil engineer. I have been associated with R. H. Martin, of the Citizens National Bank Building, Los Angeles, since 1911 in a clerical capacity. I am associated with him in this land matter. I have visited the Papago country in Pima County, in his interest, approximately 12 or 15 times, each visit extending from a few days to a week, and as long as 5 or 6 months *months* on one occasion—they have been made from 1911 to the present time. On several occasions I have accompanied people desiring to investigate the land. I have interviewed the Indians on some of these occasions. In reference to my affidavit, made May 29, 1920, there are 28 Indians named therein whom I conversed with. I interviewed them usually to inform them concerning what we are doing, or intending to do, regarding the present suit. In some instances I ob-

tained information from them as to the monuments of the tracts—that is, the natural features that are mentioned in describing the tracts. During the last 2 or 3 years they have refused to give any information—before that they did not refuse. It would be difficult to give the names of the other Indians similarly interviewed—there would be possibly as many as 100 altogether. All this was done in the interest of Mr. Martin and the Hunter estate. I also prepared for Mr. Martin, at his request, a report, dated Los Angeles, Dec. 29, 1911, describing 10 separate tracts, one of which is No. 2 in the report, being the tract called the Santa Rosa tract. It was after Mr. Martin acquired this interest in the Hunter estate that he engaged me to come down here and prepare that report. I don't know who prepared the attached statement of facts, dated April 23, 1914, or the attached map showing the approximate location of Papago Indian lands in Arizona. I understand that the above papers are the papers used by Mr. Martin in connection with his plan to sell interests in the Papago lands covered by the Hunter deeds; including the Santa Rosa tract. I assume that the tract described in the report as No. 2 is Santa Rosa. The boundaries of the tract on the map show the approximate location according to the description on the map, but do not correspond with the description in the complaint. The northern boundary of the Santa Rosa tract runs several miles farther north than as shown on this map and the tract shown as No. 2 on this map is rectangular. According to the description in the complaint the last line, running 30 miles east to the point of beginning could not be at right angles with the east and west boundary lines. I don't see the Peak "Kabitka," designated on the map. The so-called pueblo of Santa Rosa is not on the county line between Pima and Pinal counties.

Whereupon, said papers were introduced in evidence as Defendants' Exhibit 4-a which is in fact as follows:

A statement of facts showing 10 tracts of land aggregating 3,354 square miles, 2,146,560 acres, describing the character of the lands, giving an opinion on the status of Papago Indians as citizens, asserting that the title of the Papagos is absolute, quoting authorities and reasons. It also recited the following:

"Under and according to the arrangement made with Colonel Hunter by Mr. Martin, the latter is obligated to consummate the segregation of these lands through the proper branches of our government. In order to acquire the funds needed for this work he is disposing of a portion of his interest in advance of their segregation at a figure much less than the ultimate market price. To do this in an equitable manner the entire estate of 2,146,560 acres is based upon a unit plan and a limited number of units are offered for sale at \$1,000 per unit. This being the only cost to the unit holder, Mr. Martin agreeing to assume all of further expense of segregation."

The exhibit goes on to recite some obligations of Mr. Martin with respect to his guarantee to purchasers and is dated Los Angeles, California, April 23, 1914, and bears no signatures.

The exhibit contains another paper headed—

"Report by C. B. Guittard on the Papago Indians at the request of R. M. Martin, Los Angeles, California December 29, 1911, which is a copy addressed to R. M. Martin, Los Angeles, California," the material parts of which are follows:

1st. Ten Papago pueblos are named, then it recites their location in a general way, gives characteristics and descriptions of the crops raised and gives opinions on the possible water development of the Santa Rosa valley; method of irrigation, opinion on rainfall, opinion on the soil, opinion on mineral deposits and purports to connect with a detailed description of each tract mentioned.

Photostat copy of letter to G. W. Peer, 518 Bradbury Building, bearing the name A. J. Pidgson, E. M., in printed form, which letter recites that the writer had read a report relative to the lands belonging to the Papago Indians south of the Gila River in Arizona, made by Mr. Guittard—recites that he had traveled over it; gives the quality of the land and the advantages offered in a farming way and its location. This exhibit also contains a map of that part of the country showing 10 irregular tracts in red which connect up with no particular points. No points designated in the evidence are identified on the map which is a very crude map.

Witness: I was present when W. T. Day, a witness, testified for plaintiff. I heard his testimony, wherein he referred to a man by the name of Brown, of Nashville, Tennessee, who came out here in 1910—I have no information concerning him except hearsay; I think his name is James F. Brown, or it might be James S.—I don't know his occupation or his address. I understood that he was related to one of Col. Hunter's sons-in-law, a Mr. E. K. Harris, of Los Angeles. I have no knowledge whatever about his acquaintances or intimacy with Col. Hunter; I judge it was not very intimate. I understood Col. Hunter to say that it was against his knowledge or his wishes that Brown came here. I have no information as to who Mr. Brown represented. They were men he expected to interest in the purchase of this Papago land, in whole or in part. I have never seen the documents Brown brought and do not know who drew them.

Pursuant to the first stipulation herein referred to, the deposition of **Antonio Lopez** was duly taken on behalf of defendants, through Hugh Norris, interpreter, at Florence, Arizona, February 18, 1922, and contained evidence as follows:

589 Direct examination by Mr. Fraser:

Antonio Lopez is my name. I am a full blood Papago Indian. Am 38 years old. I live at Kiacheemuck—I was born and raised there—sometimes I live here. I come here to find work and make my living—some of the people from Kiacheemuck come here for that purpose every year—they have a village of their own here. I never heard of the meeting of Con Quien and Luis of Santa Rosa being held in Tucson until Bowie told us about it about 3 years ago—

he called a meeting to talk about it—there were many present—all of the grown men of the village—they were asked if they knew anything about this suit, and they don't seem to know anything about it—we met in the open air—I have never been able to find out anything about it. I never found any Papago who ever knew of this suit before Bowie told us. As far as I can remember the chief at Achi was chief of his own village and it was so at Kiacheemuck, Akchin and Anegam—the 4 villages never met all together in council. They have meetings at their own village.

Cross-examination by Mr. Reid:

Mr. Bowie told us this suit was for the purpose of taking away some of the land from us—that some of the land was sold, and if any one of us knew anything about it to tell him. The people of this little village near Florence all came from Kiacheemuck. This village was established as far back as I can remember. The chief at Kiacheemuck acts as our chief also—he sometimes acts as chief at Akchin also. We believe Konderome is chief of the part of Kiacheemuck where the houses are scattered. There are chiefs under him who are chiefs of only a small group of houses, but they don't consider any head chief or any one higher than theirs. Konderome at Kiacheemuck had a man by the name of Juan Lopez—he is a chief but he is under Konderome. I have heard of the name of Con Quien, but I never knew anything about him. He died long ago before I was old enough to remember—I do not know where his home was. The chief at Kiacheemuck is Konderome and Juan—they are both chiefs of the same village, but of no other village.

590 Pursuant to the same stipulation herein referred to, the deposition of **Hugh Norris** was duly taken on behalf of defendants, at Sacanton, February 19, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Hugh Norris is my name. I live at Sells. I am a full-blood Papago Indian; about 48 years old. In my young days I lived at Vamori, then most of the time at San Xavier. I am chief of police in the Indian Service over the Papago country in Arizona. I have held this position for 20 years and my duties have required me to travel the Papago reservation extensively—I have been all over it. I am familiar with the Santa Rosa district. I went to school in Albuquerque, New Mexico, in about 1888—I came back for a year or over and then went to training school at Tucson—was there 4 years and in 1896 I went to the Mission, staying there until we went to Sells. I have translated the Papago language into English and vice versa as interpreter during the last 25 or 26 years in court and on the reservation. I have interpreted in the United States courts for over 25 or 26 years and have been to Phoenix and once to Yuma and they call me to Tucson anytime they have an Indian case. I just interpret on the reservation when they call me. There is no

official interpreter on the reservation. For 20 years I have been familiar with the Papago people around Santa Rosa. The group of villages around Kiacheemuck are all called Santa Rosa now by some people—they call the one village where the school house is, Santa Rosa, and have done so for quite a while in speaking to white men. If an Indian meets an Indian they would call it Kischeemuck, or if he was from Achi he would say Achi. Papagos never use the word Santa Rosa in speaking to each other of one or all the villages. From Kischeemuck to Achi is $1\frac{1}{2}$ or 2 miles northeast, Anegam $3\frac{1}{2}$ to 4 miles due north, Iloitak about 2 miles south and Akchin about 3 miles south. These villages around there have changed from larger villages to smaller ones—I believe Anegam is now the largest. The houses are scattered all over—there are no streets—sometimes cultivated fields and sometimes grease wood and mesquite, or
 591 the desert, lies between the houses. Kiacheemuck would stretch about 2 miles one way and 1 or $1\frac{1}{2}$ miles the other way, there is no plaza in any of the villages—they are all about the same. I know where Kabitka is—it is east of Kiacheemuck village—it is a mountain, a kind of peak—it is a kind of a range about 6 miles long, about 6 miles from the government school. In my travels I never heard of the name Okomo from the Papagos. I never heard of Oximo—the name that comes nearest the sound is a mountain north of Comobabi village the Indians call Unukam.

“Q. Is Unukam a peak or a range? A. It is a range of mountains.”

It is about 7 or 8 miles east, west, south and north—it is kind of a round range—the nearest point is about 14 or 15 miles south of Kabitka. I never heard of Mescalero. I don't think I ever heard any place in the Papago country called Sierra Cabeza. I know of Black Head. I have heard them call a mountain Stuchmoe (Black Head)—it is in the Vekol mountain range somewhere. The Vekol range is a sierra—Table Top is not in a sierra—it is off by itself. I know there is a big gap between Table Top mountain and Black Head Mountain, but I don't know how far it is from Table Top to Black Head. If you go about $1\frac{1}{2}$ or 2 miles north or east from the government school you can easily tell that Table Top is all by itself, and not part of the range in which Black Head mountain lies. The people of Anegam call it Anegam by itself. I don't think they belong to the same division of the Papagos as the people of the other three villages. The people of the other 3 villages have a different name among the Papagos—other Papagos call them Toktogowa. No Papago village that I know of claims to own any definite tract of land around it—this is so as far back as my memory goes. These 3 or 4 villages have never claimed a definite tract of land. As far back as I remember no Papago village has claimed a boundary line between it and any other Papago village. Accord-
 592 ing to Papago custom the individuals own the cultivated fields and when the head of a family dies, his children or widow or nearest relative take his fields. They believe that

all of them own what is known as the Papago reservation now. A Papago can change his residence and take up land elsewhere at will—he does not have to get permission to settle elsewhere—they just leave their old fields and they are open for anyone else to take up. No village ever claimed to own the land around it in common or as a village. The cattle are not confined within certain grazing limits—no attempt is made to keep the cattle of one family or village separate from those of another. It has always been the custom to have one chief at each village—there has been no exception to that and this was true of the Santa Rosa villages. According to custom the chief is chosen by a son if he is fit taking his father's place when he is too old or dies, or the old chief may elect a relative or he may elect somebody in his village when he thinks is fit to be chief after him—I know of no other way that they are chosen. A chief usually holds office for life as long as he behaves himself and, of course if he does something wrong he will be taken out. As far back as I can remember it is the chief's duty, when he hears anything that he thinks is important, to call them to come to his place and meet there and they talk the thing over. In the olden times he had powers of punishment but this power has not existed in my recollection.

“Q. As far back as you can remember, if the chief gave orders to anyone and that Indian disputed them would anything be done to him? A. Yes, he would either be punished by him or he would send him over to the agent for him to see about his case.”

Asked what is the meaning of the chief's council, frequently referred to in the testimony. I reply that, as I understand it, the chief really has no council but it is just the old men of his village who are old enough to speak about things in the village if they have anything important to talk about. If there is something important he would call all the old men in and if the young fellows want to come in they can sit around and listen to what they

593 talk about.

“Q. And would there be any particular old men who formed the council, or how would it be? A. It would be all old men.”

I don't think that in any of these Santa Rosa villages the council consists of any fixed number of people. There are liable to be more there one time than another. The Paragos, as a tribe or a nation, are attached to, and are fond of their lands. A matter that affected all the lands around a village would be considered a matter of high importance. A chief would have no power to grant any part of the land around a village without calling a meeting—if he did call a council the chief and council together could not give away or grant part of the land around the Papago village—this is true as far back as I remember. If a chief wanted to give a white man the right to go into court and bring a suit about the land around a village he could not do so without calling a council. I never knew of a head chief of all the Papago nation. I have

heard of Con Quien—I never knew him—he was never considered by the Papago people as head chief that I know of—they considered him chief of his own village, I heard, like any other chief. The Papagos consider the boundaries of the Papago country to be Baboquivari range which is the outline on the east—Pima County line on the north; Ajo range of mountains on the west and the Mexican border on the south. When I was a boy most of the Papago houses were built of grass, some ocatillo and some cactus ribs. No adobe brick houses in those days; it would take a family of 5 people about 4 or 5 days to build a grass house, about a week to build a cactus rib house—the grass houses had no windows—the doors are about 3 feet high in an arch shape. In the cold weather they build fires in these houses and the smoke would just go through the grass—none of the houses were more than one story—none had windows—none of the houses today are more than one story. In the old days a house was destroyed after a death had occurred in it. The Papagos have no written language and
594 as far back as I can remember no considerable number spoke English—there were quite a few of them spoke Spanish who live over to the south. They were very few in the north who could speak Spanish—they were more mixed in the south with the Mexicans on the Sonora side.

“Q. When you were a boy what was the general feeling among the Papagos as to the white man's customs and the entry of white men among them? A. In some parts they kind of hated to have the white people around them—the Mexicans came in and on the southern part they don't seem to hate them so much.

Q. Do you know what that feeling was around the Santa Rosa villages as far back as you can remember? A. They don't want the white men, or Mexicans to come in among them there.”

In those days I don't think the Papagos knew anything about the white man's laws.

Q. “Q. Would many, or any of the Papagos, in those days be able to understand what is meant by a deed? A. No, sir, they would not know what it meant.”

They would hardly understand the meaning of a power of attorney.

“Q. Coming to the present suit, when did you first hear anything about the suit or the Hunter transaction of 1880? A. I first heard of it from Mr. Brown—that was in 1910, if I remember it right.”

He called himself James Brown. The way I met Mr. Brown, I was told by agent McQuaig that there was a man in Tucson who wanted to see about some Indians and he told me
595 to go and see him. I went to Charlie O'Doll's house and we went down to Broadway to a lodging house and saw Mr. Brown who said, “I would like to go out to the Papago country and I would like to have you go along with me.” I got my wagon and team from the Mission and came to Tucson the next day. Mr. Brown said, “I cannot go out with you but I would like you to go out there and see some of the old chiefs and get them to sign these papers.”

He gave me some papers; the papers described 10 tracts of land,

one of which included Santa Rosa tract as No. 2, reciting and setting forth a power of attorney from Ascension Rics, of San Xavier, to Robert F. Hunter, and containing a confirmation of the appointment of said Hunter, as attorney, and attorney-in-fact, and it also provided for a scheme for a partition of the lands around San Xavier between Hunter and the people of that village, bearing at the end the date of 1910. He handed me this and 9 others. This one is apparently made out for execution by the chief at San Xavier. I don't remember if there was a similar instrument for Santa Rosa. All the instruments were similar, the difference being that they were blank right where Ascension's name is and San Xavier's name is. I think the words Ascension Rics and San Xavier were written in that instrument when it was handed to me. Mr. Brown told me to go out to the villages and see the oldest Indian chiefs that I could find and get them to sign the papers. I said I could not promise that I could get them to sign, he said, "I believe you can if you try—I want you to do this and I will give you \$100. for each name that is signed on the papers." I said, "I won't promise you because I don't know whether they will sign." That was the last word he said to me. I started out and the first man I saw at the village outside of town was Juan Pablo—I asked him if he knew anything about this land sale or agreement to give half of the Papago land to Col. Hunter—he said he never had heard about it. I went to Quijotoa and saw Jose Luis—he was the old chief of that village. He said he did not know anything about it.

596 (To the question which elicited the answer contained in the last sentence the plaintiff objected; ground, hearsay; objection overruled and exception noted.)

(Witness then describes similar interviews with the chief or acting chief of little Tucson, Topowa, Covered Wells and San Xavier, and with a very old man at Comobo'i, all of whom denied any knowledge of said land sale or agreement with Col. Hunter. Copies of each of the instruments testified to by these witnesses, offered in evidence as defendants, exhibit 5-a, Objected to, by plaintiff as incompetent, irrelevant, immaterial, and hearsay.)

I returned the papers to Mr. Brown. After this Brown transaction I next heard of the Hunter transaction of 1880 at the Sells meeting in 1918, where I was present and part of the time acted as interpreter. There were fully 100 Indians there—they came from almost all the villages. I don't know if any of the Santa Rosa people were there. Mr. Bowie and Mr. McCormick spoke. They told them that there was a suit in court about some land—that some of the old chiefs are supposed to have agreed to give half of their land to Col. Hunter as their attorney. They asked the Indians if they had ever heard about it before and they seemed to know nothing about it. A committee was appointed to investigate. The Indians gave the names of the ones they wanted to be on the committee of investigation. I was not there when the committee reported. Since then I have made inquiries about this suit or this Hunter transaction among the Papagos. I would go to the villages and if I saw an

old man or an old woman I asked him or her about this and they seemed not to have heard about it before. I have never found a Papago who ever heard of a council meeting to authorize any of these Hunter deeds or powers.

Unukam was the name of the mountain that I said resembled Okomo. I could not point to this mountain on the map (Defendants' Exhibit 1)—they are on the north part of the Comobabi mountains, north from Comobabi Village.

Cross-examination by Mr. Reid:

There was a place near Poso Blanco where there were evidences of former roasting of mescal roots. In Spanish a place called Mescalero would indicate a place where mescal was manufactured.

597 "Q. Kabitka Mountain is pointed out and referred to as a large peak, is it not? A. It is a range of "mountains and Kabichk is on the south side of the range.

Q. The remainder of the range is very much lower than the end to the south? A. Yes, sir.

Q. You have been acting as one of the interpreters during all this hearing before a notary public, have you? A. I have.

Q. Attending these hearings, who else has been in attendance practically all the time at the taking of all the testimony representing the government? A. Jose X. Pablo, Mr. Thackeray, and Mr. McCormick."

Jose X. Pablo is in charge of all the cattle owned by the Papago people. His duties are just to look after the round ups and any mixup of their cattle. Mr. Thackeray was supervisor sometime ago, Mr. McCormick is the present agent. Father Bonaventure was also present practically all the time, acting in the interest of the government. He is the Catholic Priest in charge of the Mission on the reservation. In Spanish the words Cerro and Sierra are used by the Mexican people in this part of the country to denote a large mountain. My testimony relative to the customs and usages and laws of the Indians refers to the time since I was old enough to remember. They say that in the olden days the Papago customs were pretty much the same as they are now. The government agents in the Papago country have not assumed much of the authority that was formerly exercised by the chiefs, the chiefs still punish for small offenses but when it comes to a serious charge they send them to the agent. Some of the Papagos know about the lines of the reservation. There are some villages outside the line. There are no regular times for council meetings. The Chief calls all the older men of the village when he wants them. The chief himself knows he has no right to sell any of the land without letting the people know about it. From my earliest recollection, to some extent, there was a good deal of fear that the Mexicans or Americans would

598 encroach upon the lands of the Papagos and they were very strenuously at all times, insisting that the Papago country should not be settled by white people and should be allowed to remain a Papago country and they have tried to keep others from

settling on the land. At the time I first heard of this Hunter transaction from Brown in 1910, I visited some half dozen chiefs of that many villages in the Papago country who were pretty old men. I told them what Mr. Brown said—I did not tell them what was in the instruments. I just told them what Mr. Brown told me to tell them—told them to sign—Mr. Brown told me to tell them that long ago some chiefs came in to Tucson and agreed with Col. Hunter to be their attorney to protect them in their land, and in payment he was to get one half of what is known as the Papago land and the instrument that I asked them to sign recited a power of attorney. I tried to explain to them what it was but I don't know whether they understood or not. I talked to a great many people other than the chiefs after that time. When I went around I asked the chiefs only. After that when I had business in the country I asked the others. When I saw an old person I asked him what he had heard about it. Sometimes I told the young men about it and sometimes the young men would be present when I would be telling the chief about it. My business took me over practically all the Papago country, to practically all the villages from time to time since 1910.

"Q. So that after 1910 the information was pretty well distributed over the Papago country? A. It would be if they believed it but they don't seem to believe there was anything in it.

Q. Well, it would be if they talked about it? A. It would be if they believed there was something in it."

Q. But in the meeting in 1918 where you had practically a representative of more than one from all the villages with a meeting of over 100 people, you did not find a single person at that meeting who had ever heard of any such thing before? A. None of them say they ever heard it before.

599 Q. Does this not indicate that the Indians are apt to forget pretty easily? A. As I said before, if they don't believe it they forget it right away.

Q. If they don't believe in it they will forget it in a week? A. Yes.

Q. Then you did not offer any of these Indians a bribe to sign the paper? A. No, sir, I did not.

Q. You were not directed to offer any of the Indians a bribe to sign it? A. No, sir."

Charlie O'Dell was a special officer on the liquor traffic, connected with the Indian Bureau—he is dead. Mr. Brown told me to see the old chiefs.

Examination by Mr. Fraser:

The mountain, Kabitque is called Kabichk by the Indians. I never heard of Kabitque before this case came up. I understand Spanish a little. I can carry on a conversation with a Mexican—I can hardly tell the difference between Cerro and Sierra—I don't know what Cerro means in Spanish. There is little difference between the customs and organization of the Papagos between 1880

and now—the chief could not do things affecting the tribe unless he called a council but he does not call it just for fun—he never did anything of importance without calling them together. The two Papago villages I mentioned as being outside the reservation are in the Sacaton reservation. Referring to these Brown Instruments, I did not tell the chiefs to sign—I asked them if they would sign and one or two of them laughed at me—I did not try to compel them to sign. If there had been a council meeting of the villages of the people, and they decided to give a chief authority to sell their land or authority to engage a white man to go into court and represent them—it is the sort of thing the Papagos would remember.

“Mr. Reid:

Q. Will you please write on the stenographer's note book there the word ‘Kabitque’ or ‘Kavichk’ the way it is written—the way you understand it to be. Can you do that, Mr. Norris? A. No, 600 sir, I won't try.

Mr. Reid: Voluntarily, Mr. Bonaventure Oblasser spells the name as follows: ‘Kavichk.’

Mr. Reid: These Papago names are very difficult to put in English writing, are they not. A. They are to some extent.

Q. This particular word or name is so difficult that you, yourself, do not know how to write it in English? A. I would not try to, no.

Q. That is the mountain 6 miles east of Santa Rosa? A. Yes, sir.”

It is sometimes referred to as Santa Rosa Mountain by White people. When I say that there is a mountain 6 miles east of the vicinity of Santa Rosa, I mean that is the mountain Kabichk. The reason I don't wish to undertake to spell the word is because there are so many ways to spell it. I don't want to say which it is.

Pursuant to the first stipulation herein referred to, the deposition of **Edwin C. Santeo** was duly taken on behalf of defendants, at Sacaton, Arizona, February 19, 1922, and contained evidence as follows:

Direct examination by Mr. Frasier:

Edwin C. Santeo is my name; am a full blood Papago Indian; about 46 years old. I am a missionary, and in addition I am a labor agent among the Papagos. This requires me to go out to the Papago villages on the reservation and gather up the men, women and children to pick cotton—I have been doing this from 1913 to 1916 and from 1917 to 1921. Sometimes I make 3 or 4 trips each year—I visit all the Papago villages on the reservation. I have heard of this suit that is going on concerning land around Santa Rosa and the supposed sale of it to a white man named Hunter. I never heard of the alleged transaction of 40 years ago when deeds and powers of attorney were given by some chiefs to Hunter. The information that I have had in reference to the matter is that on one

601 of my travels I came to a certain village and the old men asked me if I knew about certain parties going around taking the names of the old chiefs; that they heard that the land was sold to a certain party—I don't remember how or from whom I heard that—it was some one down either at Santa Rosa or Picinimo—that is all I heard, or all the inquiry that was made of me. I told them I would inquire into the matter and find out if there was any truth in it, so each village I visited the first thing I would do would be to look up the old men in that village and inquire about this land being sold to a certain party—I did this in most of the villages that I visited—I began to do so somewhere in 1915 or 1914, I don't remember the year. I have continued to make these inquiries since then—I talked mostly to old men. I never found anywhere in any Papago village any Papago who had ever heard of this land sale. I heard about the meeting in Sells in 1918 to consider the same subject. I believe I talked with some of the people who were at that meeting.

"Q. Had any of the people you talked with after the meeting heard anything about it, about the land transaction before that meeting? A. Very little."

I was born here on the Gila below Florence. My early life was spent in the village of Tecolote, in the Papago country. I was 14 when I left there. As far back as I remember I began to take notice of the laws and customs of the Papagos—then each village had its own chief. I have heard of Con Quien—I don't believe he was head chief of the whole Papago tribe of Indians—he was chief at his own village, Quijotoa. As far back as I can remember the chief would call a council of his own village to discuss anything of importance. The council consisted of most of the men of the village, sometimes a few would not answer the call—mostly they would but sometimes two or three would not. In those days there was no custom for a chief to sell or give away the land around a village—if he wanted to engage a white man to prepare a suit about land around a village, he could not do so without the consent of the council. Then the Papago houses were made of grass, cactus ribs and ocatillo, hardly any adobe houses. They raise more cattle these days than in the times I remember. After that meeting of Sells, 602 the Indians I talked to remembered the meeting—they seemed to understand what was said at the meeting—they thought the subject was about their land being sold.

Cross-examination by Mr. Reid:

I don't remember how many people who talked to me, had heard of it before the meeting at Sells—may be as many as half a dozen. The Indians had their own laws or rules to go by in the early days—there was no rule about selling lands. As a general rule, when a chief wants any big business he has got to call in his men of the village to explain to them, and if it goes all right with the people generally, it is the thing. He would not make a contract for the

sale of land without first getting the consent of the council—he would not think of doing it in any other way.

“Q. Beginning as far back as 1913 and 1914, you constantly made inquiries of the people of the various villages about this alleged sale of land? A. From about that time I started to work among the people from 1913, but somewhere along in before that time I quit for a while, then I found out there was a certain party going round taking the names of the chiefs.

Q. About 1915 was that? A. Maybe, yes, sir.

Q. And from that time on you made repeated and constant inquiries about this matter? A. From the older people, yes, sir.”

The older chiefs were considerably interested and some were anxious about this matter. They showed kind of a surprise about it and a little worry. I don't remember the names of the men I talked to, but Konderone, I think, was one—he is the chief at Kiacheemuck, and when I would return, in a few instances, they would inquire if I had heard anything. They didn't repeat that afterward. They all knew the officials of the government were looking after their affairs. It was about 1916 that they were still showing anxiety, or interest. It was somewhere about 1915 when I talked to Konderone about this matter.

“Q. About 7 years ago—had he heard anything about it? A. Yes.

Q. What did he hear? A. He did not tell me; he heard about the case some time before that.”

603 He heard about it recently before that. Neither he nor any of the men I spoke to ever heard of a council or village meeting to authorize a sale of Papago lands. I know Hugh Norris very well.

Pursuant to the first stipulation herein referred to, the deposition of **Frank A. Thackery** was duly taken on behalf of defendants, at Sacaton, Arizona, February 19, 1922, and contained evidence as follows:

Direct examination by Mr. Fraser:

Frank A. Thackery is my name; am 49 years old. I am a special supervisor in the Indian service of the Interior Dept. I was in the Indian service from 1901 until 3 years ago. I was first employed as laborer at the Sac and Fox Agency, Oklahoma and later farmer at the Indian School there—then teacher of Industries and manual training at Crow Creek Indian School, South Dakota—then disciplinarian at the Genoa Indian School, Nebraska—then as superintendent under the agent at Riverside School, Oklahoma—then superintendent of Shawnee Indian Agency, Oklahoma—then as supervisor of Indian Schools, with supervision over California, Arizona, and Nevada—then as superintendent of the Gila River Indian Reservation, Arizona—then as chief supervisor of farms for the

Indian Service, and then I resigned and was out 3 years and then took up the work I now have. I have also been a member of the Indian Competency Commission, acting in 1915 or 1916 with Major James H. McLaughlin—at the end of a year with him I was made chairman of a separate commission with another inspector acting with him, for about a year. The nature of the work was that acting with the superintendent of the reservation visited, as the third member of the commission, we visited the allottees of the reservation individually and determined which of them were sufficiently competent to receive full title to their lands and thereby become citizens. From my whole experience I became acquainted with the Sac and Fox, and Kiowas, of Oklahoma; Sioux of the Dakotas and Montana; and some with the Omahas and Winebagos in Nebraska; the Kiowas, Comanches, the Caddos and Wichitaws, Shawnees, Pottawatomies and Kickapoos of Oklahoma. Then as supervisor I visited all the tribes in Arizona, most of those in Nevada and all those in Southern California. As a member of the Competency Commission I visited Fort Pick Agency, Montana, Sturdy Rock Agency, of North Dakota, Cheyenne River, South Dakota, and Flat Head and Black Feet, Montana, the Umatilla in Oregon, Cœur d'Alene, Fort Hall and Limhigh Indians in Idaho; the Choctaw and Chickasaw in Oklahoma, and I have seen a good deal of the Creek, Cherokees and Seminoles, of Oklahoma, and the Shoshones in Wyoming. I first visited the Papago country I think the latter part of 1911. I was then supervisor and the year following I was made superintendent of the Gila Reservation in Arizona, under which there were some 1,200 or 1,500 Papagos; then as chief supervisor of farming I was in the Papago country on a number of trips. I have seen more or less of them for the past 11 or 12 years. My experience has taken me among the tribe on the present Papago reservation frequently. I have become familiar with their tribal organization and government. The chiefs among the Papagos are selected just about the same as they are among other Indians that I have knowledge of, either coming to a man by inheritance or by a man establishing his own prominence with the people by his ability as a man of influence amongst them—I would call his authority rather indefinite. I have heard a great deal of the testimony recently taken in this case and have heard frequent references to a council assisting or advising the chief. The Papago system of choosing a council is just the same as it is or was with all the other Indians in the country. The word "council" is usually used to refer to a meeting about a matter in hand that to any definite body of men. According to Papago customs as I have observed them, there is never, or usually, a definite body sitting in council and when there is a matter in hand to counsel about, the chief of the village usually calls a meeting to which all the men are invited and those in attendance constitute the council. I have never
605 attended a council meeting but to which all were invited to attend; their meetings on any business matters or things of that sort are always open—anybody can go who has knowledge or

ideas on the matter at hand, and he may speak. I have attended councils among the Papagos and other tribes—all Indian councils are practically the same—and held in practically the same way—their leaders are recognized as leaders. I see no difference in the Papagos, the Kickapoos, or the Sioux. In recent years, among the Osages in Oklahoma, where there have been large property interests, and where, by reason of some act of Congress requiring that certain matters shall have the approval of the council before submission to the department for action, there has been established a definite council—this is more or less in recent years. The Papago tribal or village organization is no more definite than the Kickapoos, the Shawnees or the Sioux who are called Plains Indians.

“Q. In your observation of the workings of the Papago system, what authority has the chief in important matters apart from the council or meetings? A. He usually settles matters in dispute over marriage relations or possession of children, or matters of that sort.

Q. When it comes to larger matters affecting the whole community, what is his power, if any, apart from the council or meeting? A. It is usually in an advisory capacity, having, as I understand it, only about the same power as any other adult.”

Speaking from my knowledge of the Papagos, as a whole, they have had very little association or contact with the white people and when I became familiar with them, they had less—they were wholly unfamiliar with the laws of the country. I think they would know it was wrong to steal, and things of that sort, but outside of such matters they have very little understanding of the law of the country.

606 “Q. Would they be able to explain, or to understand, what was meant by a deed or a power of attorney? A. Very few of them.

Q. Would they attach more importance to that than to any other piece of paper? A. No, excepting very few who have had sufficient education to understand.”

These exceptions are people who have attended school. In searching for information in this case I was told that an Indian at Silymarki had a very valuable paper which probably related to this case. I took Mr. Jose X. Pablo as interpreter and drove many miles to his village—we found him at his farm in the Santa Rosa Valley. After considerable talk and explanation as to who I was and what we wanted, he produced the paper in question which was nothing more or less than an advertisement for a certain brand of overalls, having on it the outline of a man showing how well the overalls fitted and calling attention to the strong seams and stitching and so on and measurements. It was very old and it had been folded until the folds were worn through and it had been carefully stitched and in many places these stitches had worn out or pulled out and been stitched a second and a third time to hold it together. He repeated a number of times that he had received the paper from

his father or his uncle—that he kept it very carefully—he had no definite idea as to what it was—he said it was a very important paper, handed down to him by his ancestors—he said the picture represented a man who had visited them in the remote past and had had some meeting with them. I talked with him an hour and a half before he brought it out—he did not want us to take it away—he wanted to keep it. I have attended council meetings one week when there would be 30 or 40 present and another a week or two later at which there may be only two or three of the same men there. During the time that I have known the Papagos they have had no head chief, to my knowledge. I am not sure of the exact date that I first heard of the present suit, at least as far back as 1914. The first information that I had was from Mrs. Cowgill, residing in

607 Phoenix and Los Angeles, who gave some information to Mr. C. R. Olberg, of the Indian Irrigation Service and Mr.

Olberg transmitted it to me, I think, by letter. It was not long after that I had a telegram from the Commissioner of Indian Affairs directing me to proceed immediately to the Santa Rosa Village on the Papago reservation and ascertain certain facts from them and also from Judge Day. I went down the following day with an interpreter and two men, had a meeting at Kiacheemuck with 30 or 35 men of that village including a chief and one or two head men and that day or the following day I visited Judge Day's store and interviewed him. At the meeting the interpreter read the telegram to the Indians gathered at council. I explained the matter as best I could and asked them if they had any information regarding these deeds or authority to Mr. Hunter to bring suit with reference to the land around this village. After talking amongst themselves they informed me, through the interpreter, that they knew nothing about it at all. I think some of them did tell me at that time that there had been one or two men there to see them about the same sort of thing, but that they knew nothing at all about it. After that at various times during the 3 or 4 years following, I made many inquiries at many different villages of many different people, especially of the old people regarding the question of this suit or the Hunter deeds, I found no one who had any knowledge of the things inquired about. The next step in the inquiry was that I was asked to meet Mr. Bowie, the superintendent and the council of Indians to go over the matter and explain the work that Mr. Bowie was about to commence in connection with this case. This meeting was held at Sells, then called Indian Oasis. Mr. Bowie, Mr. McCormick, a number of Indians and I spoke. The 3 white men mentioned told them that some 9 or 10 villages were involved, and particularly the tract in the case about the group of villages in the Santa Rosa Valley, explaining to them the best we could about this power of attorney, which was supposed to have been

608 given Mr. Hunter as authority to take the matter into court and if he got a favorable decision that he was under agreement to receive half of the land for his services. Inquiry was made of the Indians, and up to the time of about 1914 nobody present knew anything about the old transaction. The meeting lasted a

good part of the day—there were men there from all over the reservation—there was room for 90 to 100 men inside and a lot of them were standing up and a number outside, after filling the room. They decided to name a committee of representative men to make further inquiry and report—they were to make inquiry particularly of the old men, to get information regarding these deeds and the authority for this suit. I don't know what the committee reported. After that I made no other official visit into the Papago country on this matter until the present visit, during which I have made inquiry and have found no one who knew anything about what happened in 1880 until this recent information.

“Q. Two or three years ago the New York attorneys of the present plaintiff were asked by the Solicitor General what was their authority to represent their alleged clients. They replied by producing a power of attorney, apparently executed in 1880 by one Luis and they also stated that the present inhabitants of the Santa Rosa vicinity were in sympathy with the suit. Have you recently taken any steps to find out whether or not the later statement is correct? A. Yes, sir.

Q. Please describe just what you have done. A. I took the matter up at various meetings with a very large percentage of adult men residing within the supposed tract described in this so-called Santa Rosa deed. I asked them in some cases, collectively and in others individually again, if they knew anything about any part of
609 this transaction and whether they wanted “the suit to continue or to be dismissed and they have all said that they were well satisfied with the way the matter stood; they one and all wanted it that way and they asked that the case be dismissed.

Q. Did you take any steps to embody this desire of the present day inhabitants of that vicinity that the suit end and not go on, in written form?

Mr. Kleindienst: We object to this on the grounds that it is hearsay—not the best evidence. Let this objection precede the previous question and we move that the answer be stricken.

(Objection and motion overruled; exception noted.)

A. Yes, sir.

Q. Please state just what you did. A. I had a petition prepared covering the matters stated, including a request for dismissal, and after having it carefully interpreted and explained to these people, they signed it.

Q. State whether any threat, or promise or pressure of any sort was offered or brought to bear upon them or any of them to induce them to sign this petition? A. No, sir, there was none.

Q. Was the petition itself interpreted in the bearing of these Indians? A. I don't understand Papago but it was given to the interpreter in each case and I know from his mentioning various words in English through the petition, that he had read it to all of

them who signed. It took a considerable length of time in each case, both preceding and following the reading of the petition. There was in almost every case quite an extended discussion and talk regarding it before they signed. (Petition produced.) The petition contained 181 or 182 signatures. The census of Achi, Akchin, Anegam and Kiacheemuck, which last-named village is marked on the census as Santa Rosa, shows a population of 610 195 males, over 21 years old. The petition contains a few women. I started out to let the adult women sign the petition also and afterwards, to avoid making such a cumbersome document, I decided just to take the matter up with the adult men. The women, according to Papago custom, take no part in the councils or agreements or such matters. In addition to the Indians to sign at meetings, quite a few signed who were not asked by me. Where my name appears as a witness opposite a signature, all signed in my presence."

Whereupon, the petition was offered in evidence as Defendants' Exhibit 6-a, to the introduction of which plaintiff objected on the grounds that the document is a self-serving document of the Defendants, and is incompetent, immaterial and irrelevant, and it appears to be a document without a date and it is not the best evidence of what it purports to show.

Overruled; Exception.

"Q. Between what dates were these signatures attached to this petition? A. From the 31st day of January, 1922, to the 19th day of February, 1922, both inclusive."

Speaking of my experience on the Competency Commission, those were found to be competent who had by several years' experience in handling their own affairs, demonstrated their ability to defend their own rights in competition with the white man or other neighbors. At the present time I consider about 2 per cent of the Papagos competent. This is based on my presence during the taking of a great part of the testimony during the present month and from my previous experience of the Papagos. A large majority of the uneducated Papagos have little or no idea of miles or acreage. A larger per cent have some idea of years or numbers but most of them have very little idea of a larger quantity as defined by numbers.

611 "Q. When you get through with this case doesn't that end your services with the Indian Department? A. I don't know that as yet—when I am through with this I will report—I won't know until I get an answer."

This overall advertisement man did not indicate or suggest that it had anything to do with the Hunter matter. I think he is an average of the older Papagos. In 1914 I went into Santa Rosa and assembled the people and told them about this suit. I collected a large meeting of the old or older men, between 30 and 40 Indians.

"Q. This petition that you had signed you say was read to them?

A. Yes, sir.

Q. Did you explain what the suit was about? A. Yes, sir.

Q. Do you think they understood it? A. I think they did.

Q. Then they understand a great deal better now than they would in 1880? A. I don't know as I know just what you mean by that.

Q. If an Indian was not competent to understand the purport of a suit or a deed in 1880, in your judgment, he would be in 1922, is that right? A. I mean by that we explained it better to them in this case than was explained in 1880.

Q. You were not present in 1880? A. No, sir.

Q. And you have no knowledge of how it was explained to them then, have you? A. No, sir.

Q. But if properly explained to an Indian in 1880, he would understand what a deed was or what a suit in court was or would he?

Mr. Fraser: Objected to an opinion evidence and that the witness is not competent to answer.

A. I have only seen these people in the last 12 years—they no doubt have a better understanding of things now than they did then. I think in a very careful way they might have been made to understand what the whole matter was, even in 1880."

612 Cross-examination by Mr. Reid:

I have been assigned to this particular case in the past month and have spent practically all of my time on the case, during this month. During my last employment by the government I have been assigned to nothing except this case. My knowledge
613 of the papers has been acquired since 1911, but is supplemented by considerable study and reading of their past.

"Q. We, including yourself, Agent McCormick, two interpreters, attorneys or counsel for both sides of this case spent about a week at Santa Rosa taking testimony, did we not? A. Yes, sir, about a week.

Q. The first part of February? A. Yes, sir.

Q. During that week you and the chief of police of the Indians and local police and interpreters were busy getting this petition signed up, were you? A. The chief of police had almost nothing to do with it—the local policeman was with us at two meetings—Mr. Jose X. Pablo accompanied me on almost or practically all of the meetings I had with the Indians, whose names appear on the petition.

Q. That time taken in getting these names signed to this petition was the time that you allowed counsel for plaintiff to assume was being used in finding witnesses, was it not? A. I had nothing to do with the program of the taking of these depositions.

Q. You knew we were waiting at Santa Rosa for witnesses a great deal of the time on the assumption that you were hunting them, did

you not? A. I did not know you were waiting there, no; we were waiting the first part of it about as much, I think, for the plaintiff.

Q. All told we were about 3 days taking the testimony of the plaintiff in Tucson? A. I don't recall the exact time—you were not on your way when I arrived.

Q. But at the very time that we were examining witnesses at Santa Rosa you and others of the party were busy getting this petition signed up? A. I was present at nearly all of the hearings at Santa Rosa with possibly 2 days exception, when I was away taking this matter of the petition up with the Indians, as well as the
614 matter of ascertaining if the older people might have knowledge of this suit and the deeds.

Q. Where there is no mark on the petition, the people signed for themselves, did they? A. Yes, sir.

Q. Eighteen have written their names? A. I don't remember how many; those whose thumb mark does not appear there were able to write their own names.

Q. Did these people who signed this petition testify in this case? A. Some of them did.

Q. Can you give their names? A. I can give some of them.

Q. All right, give them. A. Antonio Lopez, the one who was examined at Florence Saturday; the head chief at Akehin Village; the old man that we examined at Cababi. I don't recall his name now; Pablo, that we examined at Silymarki and all of the witnesses examined at Santa Rosa, who resided either in the village of Kiacheemuck, Anegam, Achi or Akehin.

Q. They signed before their testimony was taken, or after? A. Some before and some after.

Q. The fact that they had signed a petition was not brought out in their direct examination of any witness that you heard testify? A. No, sir.

Q. And we had no opportunity to examine them on this on cross examination? A. No, sir.

Q. Was that purposely or accidentally done? A. I don't know.

Mr. Reid: We move to strike the petition as not competent as testimony or evidence in the case, as not upon any issue properly raised in the case and upon the further ground that no opportunity has been given counsel for the plaintiff to take up this matter with any of the signers or cross examine them on it—motion denied—exception noted.

It is stipulated between counsel that "without further testimony
615 Mr. T. F. McCormick will testify that he witnessed the signatures opposite which his name appears and the signers signed in his presence.

Defendants' Exhibit 6 is as follows:

"We, whose names are written below, respectfully say to the court:

1. We are full blood Papago Indians; we all live in the Santa Rosa Valley on the Papago reservation in Pima County, Arizona, and in

one or other of the Santa Rosa group of villages. The name of the village where each of us lives is written after the name of each of us.

2. We have been told that in 1880, the year the railroad came to Tucson, Luis, who was then chief of one or more of this Santa Rosa group of villages gave a paper to a white man called Robert F. Hunter, which seemed to give Hunter the right to bring a suit in the white man's court about the lands lying around these Santa Rosa villages. None of us, old or young, ever heard of this paper until the government men told us about it a few years ago; and none of us ever gave our consent to it.

3. We have also been told that a suit has been brought by white men and is now going on in the White man's court under authority of this paper which Luis gave to Hunter; that it is brought in the name of the Pueblo of Santa Rosa against some of the government men, and that it has to do with a tract of land lying around Santa Rosa villages. No one of us ever knew about this suit until after it was brought. No one of us asked anyone to bring it, or gave anyone the right to bring it; no one of us approves of this suit or wants it to go on.

4. We respectfully ask the court that this suit which we do
616 not want, and with which we have nothing to do, be dismissed."

Said exhibit contains 181 signatures as testified in the testimony of the witness Thackeray and each signature is witnessed by two witnesses as testified. There are 80 who gave their village as Kiacheemuck. At the end of the exhibit there is an affidavit that Hugh Norris and Jose X. Pablo are full blood Papago Indians and understand and speak the Papago language and read and write English—they are competent to be interpreters—they have interpreted fully, clearly and correctly; that they have interpreted everything said at each of the meetings or interviews at which the signatures in the foregoing petition were procured and that the signers signed in the presence of the one whose name is affixed as a witness; that the foregoing petition was read and fully and accurately interpreted and each signer fully and carefully informed of its contents.

Pursuant to the first stipulation herein referred to, the deposition of **Ben Johnson** was duly taken on behalf of plaintiff (introduced in evidence by defendants) at Florence Diversion Dam, Arizona, February 18, 1922, and contained evidence as follows:

Examination by Mr. Reid:

Ben Johnson is my name; I am 45 years old. My home has been at Cababi all my life. My father died when I was a kid. My fields are at Big Fields—my wife's fields at Little Field. She is dead. I remember Tom Day, his home is at Quijotoa.

I have seen Mr. Guittard before. They came down to see me at Cababi when the Indians were playing football—He called us to come together he wanted to find out something—I don't know

what—he and Tom Day called the Indians together—he took a picture of all the Indians gathered there—he sent me a picture. I learned to speak English at Grand Junction, Colo. Some old Indian came and asked if anybody know the land—he said the old chief sold it—he said nobody knows about it—he don't know when he sold it.

617 “Q. Did he tell you about the deal that was made many years ago between a white man by the name of Hunter and the Indians about their protecting the land of the Indians? A. We don't know about that—the Indians don't know about that.

Q. He told you about that, did he? A. Yes.

Q. That is, Mr. Guittard and Mr. Day told you about what happened years ago? A. Yes, that is all I remember but he asked what we know about it—one old Indian that I tell to come over he heard and he asked him and he said, “I don't know, I don't remember.” He asked some of the Indians about it. Some go away because they don't know nothing about that.

Q. Did they explain to you at that time what had taken place many years ago relative to the land, about a deal having been made with Col. Hunter to act as agent for the Indians to take care of and get title to their land for them? A. No, I don't hear about that.

Q. Did they tell you about a suit that was going to be brought in court about this land? A. I don't know me, I don't know it myself.

Q. You don't remember that? A. No, I don't remember.

Q. Did you not tell Mr. Guittard yesterday that you did remember about it? A. No, I don't talk about it much.

Q. On Tuesday, did you not tell Mr. Guittard that you remembered about him being there and telling him about the suit? A. Yes, he asked me about it but I don't hear about it.

Q. But he told you about it yesterday, or day before yesterday, is that the first time you heard of it? A. Yes, I don't know about it.

Mr. Reid: I guess we will have to have the interpreter.

Whereupon Hugh Norris acted as interpreter.

Q. Do you remember the time that Tom Day and Mr. Guittard came to Cababi? A. I remember that.

618 Q. Have you known Tom Day for many years? A. Yes, I began to know him when I came back from school.

Q. Was there a feast on at Cababi when they came there? A. Yes, they were having a feast.

Q. Were there Indians there from other Indian villages around? A. They were from three different villages.

Q. Did Tom Day and Mr. Guittard call the Indians together to talk with them? A. Yes, they stopped there at the village—they did not call us up but we got together when they stopped.

Q. More or less, how many men were there? A. There were a few of them got together, there may be about 20.”

They said they were going to ask us something about this land—I don't remember much about it—the one thing I remember was they were trying to find out about a certain well—that man there knows about it (indicating Mr. Guittard.) That is what they wanted to find out about. They told us they were there concerning a matter affecting the title of the Papago Indians to their lands. They say about some governor in the olden time sold some of the land and they also wanted to know about it.

“Q. Did they tell you there was going to be a suit, or was a suit in court about this land? A. Yes, Tom repeated that in Indian.

Q. At that time were you and the other Indians willing for that suit to go on to determine the title of your land? A. No, none of us liked it—we don't know anything about it.

Q. Did you tell them at that time that you would like to have the suit go on, but since then you have heard so much about it that you don't want it to go on? A. No, we never say anything about that, that we would like the suit to go on—we asked an old man, and he say no we don't want it.

619 Q. Did you not on last Tuesday tell Mr. Day and Mr. Guittard that you remembered to have told them at that time at Cababi that you were willing and wanted the suit to go on but since that time you have been talked to a great deal and you now think otherwise? A. I told them I could not tell them anything—I don't know much about it—the first time I know was when you people came to Cababi.

Q. Did you not tell them Tuesday when you were here where you are now that you told them when you were at Cababi at that time you would like to have the suit go on but since that time other people have talked about it so that you feel differently now? A. As I said a while ago I don't know anything about it, I could not tell them that I would like it one way or any way—I told them to ask the old people about this.”

Cross-examination by Mr. Fraser:

“Q. Did Tom Day and Mr. Guittard inquire about a place called Okomo when they were at that meeting at Cababi? A. Yes, that is what they asked us about, but we don't know what that was about, we could not say.

Q. None of the Indians there had ever heard of it, had they? A. No, none of them seemed to know anything about it.

Mr. Reid: Is there a place over in that Country known as Oximo? A. No, I never heard of it.”

Pursuant to the first stipulation herein referred to, the deposition of **Jorge Vera Estanol** was duly taken on behalf of Defendants at Los Angeles, California, June 30, 1922, and contained evidence as follows:

Examination by Mr. Fraser:

I am 48 years old, resident of Los Angeles, California, since 1915. I resided in Mexico—up to 1914. I travelled a year in Europe
620 and then came to Los Angeles, where I established my residence in February, 1915. I am a native Mexican—I speak

Spanish and I think I can understand and speak English. I acquired English in two ways, by studying and reading books written in English and by practising it with my clients in my office. I am attorney at law since February 1896. My education is divided in 3 parts—1st, a primary curriculum of 6 years; then preparatory school; then high school; and finally, a proper law education in the school of Jurisprudence. This law education comprehends Roman law, Spanish law, Mexican, Civil, Commercial, Penal and Constitutional law; and we had the general procedure, economics, history of law, philosophy of law, private and public international conflicts of law and some other accessory matters of lesser importance. I received a diploma after I had concluded my professional studies, by which I was authorized to practice law in all the Republic of Mexico and each of its states, federal districts and territories from 1896. I practiced in the Republic of Mexico and in the City of Mexico up to October 1913, and then here in the U. S., from February 1915, up to the present time. I have been Professor of commercial and general law in the National School of Jurisprudence, City of Mexico, from 1903 to 1911; also legal adviser for the Interstate Commerce Commission in the same city. I also had the portfolio of Public Education and of the Interior in the Federal Government and acted as legal adviser of the General Attorney of the Republic in litigation started against the Federal Government on matters connected with land and water concessions. March, April and May, 1911, I was Secretary of Public Education and Secretary of the Interior of the Presidential Cabinet. In 1908-1909-1910 I was legal advisor of the General Public Attorney in the litigation above mentioned and 5 months of 1913 I acted as Secretary of Public Education in the Presidential Cabinet. I also acted as one of the Commissioners for the formation of the mining, water and land law, in my capacity as attorney for the Government of Mexico during the years 1908, 1909 and 1910, and I have had professional commissions from my clients in my legal practice and business. Among my clients have been the Kansas City, Mexico and Orient Railroad; Naozari Railroad Company; The Moctozuma Copper Company; the Cananea Consolidated Copper Company; The Northern Railroad; Mexican Metallurgical Company; the Compania Agricola del Chapala; the Compania Hydro-electrica del Chapala; the Culiacan Land Company; the Compania Industrial Jabonera; Compania Algodonera de la Laguna. I never represented the Pullman Company but acted as their counsel. I was offered the position of Attorney General under the Porfirio Diaz Administration. In my study and practice I acquired knowledge of the laws governing the right or title of Indians in Mexico to land which they had immemorially lived on. This knowledge covers the law of Spain prior to Mexican independence and the law of Mexico subsequent. I have had some opportunity to study and practise the law covering the creation, organization and legal essentials of pueblos and communities among the Indians in Mexico up to 1853. No laws were ever enacted by the national government regarding the conditions for the creation of Pueblos de Indios (Indian Pueblos) after the independence of

Mexico, and up to date of the Treaty of Mesilla (1853), in order that an Indian community in Senora might be legally called a pueblo. Therefore the laws in force at that time were the Spanish laws, and they required of a pueblo de Indios a special act of the Viceroy, the Presidente of the Audencia, otherwise the High Justices, or the Governor of the province authorizing the creation of such pueblo, for the purpose of reducing it to peaceful, sedentary and Christian life as the law recited. The creation of the Indian Pueblo was, therefore, a matter of public policy and not of individual action. By that I mean that it was not enough that a certain number of Indians were gathered and living in a place to be considered as a pueblo de Indios.

622 It was necessary that said authorities mentioned considered it a public benefit or welfare to reduce said Indians to a populated center, something like a reservation of Indians, in order that they might abandon their warlike activities, their paganism and their nomadic life; so when there was a possibility in the opinion of these authorities of reserving and reducing these Indians, they moved to do it; they called the Indians and offered to them to be reduced—(that was the word used by the laws in force)—it meant that the Indians were reduced to at least semi-civilized life. It was necessary to have an act from these viceroys, etc., to have a pueblo created. If there was no such act it was simply a gathering of Indians without legal entity whatsoever. The word "pueblo" in Spanish has several meanings, a technical, as well as a common meaning—the common meaning, in a general way is equivalent to a city, town or village or people as understood in English. While its technical meaning, applied to America, was used to express the community of Indians accepted by the Spanish Government as a legal entity under the conditions above set forth. Up to 1853 there were not any smaller or less organized communities than a pueblo recognized in Mexican law as legal entities. There was a complete difference in the creation of cities, towns or smaller towns named in Spanish "ciudades" "villas" or "lugares" and the creation of pueblos de Indios. The former applied to Spaniards while the latter exclusively to Indians—the former created organizations with administrative, political, judicial and civil entities; while the pueblos de Indios only brought with them the idea of police organization among the Indians themselves and legal entity to acquire common property. They had a certain autonomic police power for very light infractions and a kind of a justice of the peace but with reduced jurisdiction. They were allowed to have their *alcaldes* (justices) and *regidores*, a certain kind of councilman for their common interest but subject to the regulation of the Spanish Crown and

623 also of the nearest city, town or smaller town of Spaniards in certain cases, or subject to individual Spaniards to whom these Indians were recommended, as it was named at that time. The Word is "encomendar", which means that the Indians were recommended to the Spaniards in order that they would protect them and instruct them in the Christian doctrine—that was the main idea. If a collection or community of Indians in Sonora in

1853 had never had any formal recognition, such as I have mentioned, although it had existed from time immemorial, it could have no right or title whatsoever in the lands it occupied, because it had not legal entity and there are two elements necessary to having title—first, the person holding the title; and second, the property to be held, and in this case the person lacked. Such communities without official recognition living on certain lands there had no right recognized by the government; it was simply the fact of possession.

“Q. Up to 1853 then where did the fee title or ultimate title to the land occupied by such Indian community rest where there had been no governmental action? A. I have to make some previous explanation to answer that question. As a consequence of the Conquest it was declared by Pope and, of course, accepted by the Kings of Spain that all the territory conquered by Spain and Portugal at that time would belong to Spain or Portugal, not only in a political capacity but as a civil domain; and the Kings of Spain, therefore, declared that all the land conquered by Spaniards belonged in fee simple to the crown, not to the Kingdom but to the Crown, to the Royal Patrimony; and they consequently declared that no private property could be created except by special grant from the same Spanish Crown. This condition prevailed after the Independence, the National Government having succeeded to the Crown of Spain in all its civil, as well as political rights, and this principle established by the laws in force, no property has had any existence in Mexico unless it has been the result of a special act of grant from the government—as long as there was no grant the fee title remained in the government.

Q. In section 122 of Hall's Mexican Law occurs this passage—“The fee of the land embraced within the limits of pueblos continued to remain in the sovereign and never in the pueblo as a corporate body”. Does that agree with your opinion on that subject?

A. No, it does not; if the pueblo has been accepted and recognized as a real pueblo de Indios and, therefore, given a legal entity the pueblo de Indios was granted some land for its establishment and these lands belonged to it as a community, so in that case the title to the land did not remain in the sovereign”.

Prior to 1853 a pueblo de Indios which had not been officially recognized, could not, in any way, acquire the absolute fee title because it had no legal capacity, legal entity, and therefore could not be title holder of any land. Before a pueblo de Indios could ever acquire title, if any, to the land it occupied it was necessary that a grant be extended to these pueblos de Indios by the King or any of the Officers in charge of extending titles in the several Spanish Colonies, which in Mexico were the Viceroy's, the Presidentes of the Audiencias and the Governors of Provinces. Such an Indian community had no legal capacity to acquire lands as a community because it lacked legal entity. Individually, the Indians could be considered as possessors and as such, be allowed to ask for a certain allotment of land by the government but they had to petition for it in their individual capacity and not as a community.

625 "Such communities could not acquire title in any way unless there was some governmental action. Such an Indian pueblo which had been recognized by the government of Spain and Mexico up to 1853 could not obtain, by grant or prescription, or any other way, title to a tract of land 30 miles long by 24 miles wide under the laws of Spain and Mexico. The largest area which an organized Indian pueblo could acquire was a tract of land, namely a 'fundo legal' for the establishment of houses and dwellings, from the sovereign—this fundo legal having 1,200 varas for each side. The pueblo was entitled to be granted another tract of land named 'ejido' to be used in common for breeding cattle and other purposes, this being one square league in extension—a vara *in* a little less than an American yard—it is 36 inches but the inches are smaller than the inches of an American yard; and a league is about 3 miles. The 'ejido' had to have a capacity of one square league and it was immaterial whether it was regular or irregular in form. It was the fundo legal that it was usual to make a square, and the center of all these measurements was the church of the pueblo de Indios and then in the 4 directions, 600 varas had to be measured from the center of the church to each one of the 4 directions, north, south, east, and west. The essential purpose of reducing the Indians was to instruct them in the Christian doctrine, so one of the first requisites for the establishment of a fundo legal was the erection of a church. Suppose there were a group of 4 villages of peaceful, agricultural cattle raising Indians in Sonora in 1853 lying from half a mile to 2 or 3 miles from each other, consisting of scattered houses or scattered groups

626 of houses made of grass or cactus ribs, plastered with clay with the houses or groups of houses—separated from each other sometimes by cultivated fields or stretches of desert so that each village scattered over a square mile or more of land, and had no regularity in the location of houses or groups of houses of any village, no streets, no plazas, no church, no mission. Suppose the villages contained some 200 to 400 inhabitants each aggregating a population of about 1,000 people. Suppose each village had its Indian chief whose office was sometimes hereditary, and sometimes elective, governing his own village, either personally or by advice of council of older men of that village, or of the adult male inhabitants upon important matters, no village having an ayuntamiento, alcalde, regidor, juez, or government or officials of any kind except those mentioned. Suppose that there were no schools and few of the Indians speaking Spanish but the great majority speaking only their own dialect, and that the civilization was that of a primitive Indian community, and according to the Indians' own belief and theory the tribe to which they belonged owned the whole country by right of original occupation, antedating the Spanish Conquest and continuing ever since. That any member of the tribe could range his cattle or horses where he pleased; that any individual Indian could take possession of, and cultivate, any piece of ground not already occupied by another Indian, which ground would then be considered to belong to him individually unless he abandoned it, in which case any other Indian would be free to take it up. Suppose that none of these villages claimed

any definite tract of land as a village or considered that any boundary line existed between the land of its inhabitants and the land occupied by the inhabitants of any other village, whether or not such 4 villages would be considered or treated as one village or as 4 separate communities, depends absolutely upon the nature of the recognition granted by the government to said villages. If there had been no recognition that would be considered simply a gathering of men and women, etc., but not as a legal community. Therefore I could not testify whether that would be two, three or four villages. If these villages were not recognized as pueblos de Indios the lands would be considered as still remaining in the government, and in the absence of any governmental recognition, those villages, or any one of them, would not be considered to have any title at all to the land it occupied—they have no legal entity—they have no title or grant extending to them so they could not be considered as owning or having any title to the lands—the general principle without exception being that all the conquered lands belonged to the Crown and could not go out from the Crown except by grant from it. The provisions of the Spanish law relating to the creation of ciudades, villas, lugares, etc., referred exclusively to Spaniards, and not to the Indian pueblos. I am familiar with the proclamation of President Juarez, of Mexico, dated September 30, 1876, relating to the title to lands to Indians. I have that with me in a collection of laws prohibited by order of the President of the Republic, issued March 21, 1922—Hall's Mexican Land Law, section-645 to 648 contains translation of that proclamation, which with two slight corrections reads as follows:

'In all ownership titles which are issued by the grant of public lands, care must be taken to express that they are given without injury to third parties; and although such injury does not exist, strictly speaking, in respect to the lands which are in possession of the Indians, when they lack their respective 'title, given by competent authority; notwithstanding the rule has been carried out, by reason of equity and public interest, of avoiding dispoiling them of the possession which they may have of said lands.

628 Property in Spanish means the ownership and the thing that is owned. In this case it is used as the ownership right. Section 647 of Hall's Mexican Law contains another passage of the same proclamation—my translation, made from "Colonizacion y Baldios," as follows:

'It will also be proper that said chiefs (he is talking about the political chiefs) notify the Indians, in order to avoid future litigations and questions, that they shall appear at once petitioning for the corresponding title to the lands that they are possessing, although nobody may dispute them, with the understanding that said title shall be issued gratis. In this way their ownership being legitimated that otherwise they could not claim for.'

There is no difference between the principles set forth in that proclamation and the law of Mexico, as it existed in 1853; prac-

tically these two paragraphs give the idea of the general and common sense in Mexico about the possession of lands by the Indians. The policy of the civil government has been to disavow any possession either by Indians or by descendants of Spaniards, or by anyone else, which is not based on a title and granted by the authorities; but at the same time with the idea of keeping peace with the Indians and inducing them to live a civilized life, it has been the policy of the government to legitimize or legalize the possession of the Indian whenever this possession is shown, and an application made by the Indians to the extent of the area that they would be granted if they had asked for it at the proper time. In certain cases this extension has been increased more than the one square

league I have referred to. The proclamation, as I have translated it gives this idea—it says that the issuance or granting of the titles to the Indians gratis is in order that their ownership be legitimated as otherwise they, (the Indians) could not claim for it, which means that if not legitimated they would not have such an ownership.

Cross-examination by Mr. Kleindienst:

I have practised law in Mexico since I left, through correspondents but not personally. I have not been admitted to practise law in the U. S. I am not a citizen of the U. S. My profession first brought me in contact with Indian titles, approximately 2 or 3 years after I began to practice it. I had to examine titles of property of Indians and individuals, located in the States of Guanajuato, Puebla, Vera Cruz, Sinaloa, Sonora, Chihuahua, Coahuila, Guerrero. The land under consideration in the state of Sonora was in Navajao and Tesia—I think they were Yaqui Indians who lived in that part of the country and it was Spanish titles I had under consideration in my testimony. I think that part of the country is inhabited exclusively by Yaquis. The various corporations I mentioned as representing, I conferred with their counsel and advised their counsel on the laws of Mexico. I was consulted by the various clients at various times—sometimes they consulted me and sometimes they did not. I had a special retainer from some of them."

When I left there in 1913 I resigned all of them but the Nacozari Railroad and Mooetezuma Company, which I still have. Such a collection of people, as has been referred to, could not be considered anything but a collection of men, women and children if not recognized as a pueblo de Indios, and the various official departments gave them no recognition until they would be recognized as a legal entity. There has been no change in the laws of Mexico between the time of its independence and 1853, so far as this matter is concerned, and all of my testimony is based upon the law of Spain prior to the organization of the Mexican Republic, which continued to be the law of Mexico until 1853 and the laws of Mexico. I have made no special study of the organization of the Indians before the Conquest except a general knowledge of the history of Mexico, and after the Conquest I know which was the

organization that had legal standing in Mexico. I have never made a study especially of the New Mexico pueblos. I never heard of the pueblo of Taos. I have made no study of the names of pueblos or communities of Indians. I have made a study of the legal conditions of the pueblos de Indios, independently of their names and locations. A pueblo of Indians, according to my conception of the law, is any group of Indians that is organized as a group of men to be allotted a certain tract of land in order to be instructed in the Christian faith and to live in peace and have a sedentary life if recognized as such, and granted land in such a way by the viceroys, etc., otherwise it had not this legal capacity.

"Q. Are you acquainted with the Tarahumare Indians of Chihuahua? A. I know there is a race of Indians named Tarahumare.

Q. Are they pueblo Indians? A. They are not pueblo Indians, they are a race of Indians.

Q. What kind of Indians are they? A. The most part of them were living in the mountains.

Q. In caves? A. I don't know, I am not an expert in geography.

Q. Are there any pueblo Indians in Chihuahua? A. I think several.

Q. Name them for me. A. I am not an expert in geography—I know they are.

Q. Are you acquainted with the Seri Indians? A. I know there is a tribe.

631 "Q. Is it possible for them to become pueblo Indians, conditions not having been possible for them to have become pueblo Indians under the laws of Spain and Mexico? A. Any kind of Indians, without exception, that would accommodate themselves to the conditions for their reduction would be granted the privilege of becoming pueblos de Indios.

Q. Are they nomadic or of sedentary nature? A. I am not an expert in geography.

Q. Will you give me the name of some pueblo with which you are acquainted in the State of Sonora.

Witness: Personally acquainted?

Q. That you have either heard of in the state——

A. I have heard of the Navajoa pueblo and Tesia.

Q. How do they build their houses there? A. I don't care to answer that question—I am not an expert in that matter.

Q. You say you are acquainted with this race of pueblos in Sonora? A. From the legal standpoint I am acquainted.

Q. You have never been there, have you? A. Never.

Q. Does it make any difference what kind of a home an Indian lives in?

Witness: For which purpose?

Q. For the purpose of making him a pueblo of Indians. A. It is not a question of the nature of their homes—it is a question of their recognition as pueblos de Indios by competent authority."

The laws of Spain made concerning pueblos de Indios was at the beginning of the 16th century as far as I remember, 1504. Such

pueblos had jurisdiction only in small police offenses and had no other authority whatever.

"Q. You say they were all granted one square league? A. I said that was the area that was generally granted them as ejido, as provided by law, but the Kings, as the owners of the land, could grant more extensions and sometimes recommended to give a
632 larger extension than one square league."

Generally they granted one square league and occasionally larger extensions of land only on account of the necessities of the pueblos de Indios.

"Q. If it were found that they really had law and peace and needed it, they would grant them the lands? A. It was a policy recommended by the Kings.

Q. And which policy they usually followed;—it was the policy to recommend and they usually followed the recommendation? A. I think so.

Q. And usually the recommendation was that they grant them all that amount needed? A. Yes, that was the recommendation—according to the provisions which I am referring to a chief could not hold all the offices of a pueblo." There had to be at least an alcalde and a regidor. So far as I know the law provides that they should be elected every year. An Indian could hold the offices but I don't think one Indian could be elected to both offices (alcalde and regidor). I am sure the law provided for the two offices. After an Indian pueblo became recognized as such, if the matter were technical in referring to it, it would be necessary to use the technical name of a pueblo but if it were not a technical matter, pueblo should mean anything that in the common and usual language means pueblo—the use of the word in Mexico by the authorities does not necessarily imply its technical meaning.

"Q. How much land was in the largest Indian pueblo you ever heard about? A. Four square leagues.

Q. That is the most land you ever heard of being in an Indian pueblo? A. Yes.

Q. You never heard of the pueblo of Isleta?

Witness: Where is it?

Q. In New Mexico. A. No, I don't know of it.

Q. Did you ever hear of the pueblo of Taos? A. No.

Q. Ever hear of the pueblo of Laguna in New Mexico? A.
633 No.

Q. Ever hear of the pueblo of Acoma, New Mexico? A. I again repeat, I don't consider myself an expert in geography."

There were no laws enacted between the organization of the Republic of Mexico and 1857, which affected the Indian pueblos.

No laws modifying the condition, or the creation of Indian pueblos.

"Q. Now, referring to section 647 of Hall's Mexican Land Law which you have just read. Was this notice to be given to the Indians in order that they might come in and get a paper title for their possessory title?

Witness: Which article are you referring to?

Q. Read the whole section (hands book to witness). A. They have no possessory title whatever—this notice was given to them in order that they could come before the government and secure from it a title they were lacking.

Q. When they would get that title what would they get, would they give them something—a paper? A. Yes."

If they were organized and recognized as pueblos de Indios and had been on this land and they came to get their grant and some one else wanted it, as a matter of policy I think that they could be given a title. There was no obligation on the part of the government to issue these titles—it was a policy—they might ask the Crown of Spain for a grant—the Crown of Spain considered itself as the absolute civil owner of the land and as such owner the Crown recommended the way which this land was to be reduced to private property, to the property of the pueblos de Indios, to Spanish towns, etc., but as owner the Crown had the right at any time to withdraw the recommendations of giving any more territory. Of course, the Viceroy, etc., were bound to follow the recommendations of these laws enacted by the Crown, because for them the laws were compulsory but for the Crown it was not compulsory.

When the Crown made a decree it was compulsory for all people depending on or under the Crown. When the Indians made application for title, even though the Crown had decreed that they should have it, the Crown had the right not to confirm it, if it did not wish. This same right in the Crown would also apply to any law regarding the ownership of lands. The Crown could abrogate it.

Q. Under your theory of the laws of Spain would the Crown grant or refuse to grant a title to a sedentary group of Indians who made application for the land prior to 1853 if there was some other claim to the land by others? A. As a matter of policy the Crown would not refuse to give a grant but as a matter of law the Crown had the right to do so. It is to be taken into consideration that the government was an absolute government and that the King, who had the power, the absolute power, to enact these laws, could revoke or repeal the same as he wanted.

Q. Would that same prerogative inure to any official or branch of the government under the laws of Mexico at the time Mexico became a republic? A. No."

Then this law became a law of Mexico which could have been revoked by proper legislative power but which was not revoked before 1853. The law, as it was enacted by the Crown of Spain, continued to be a law of Mexico regarding all these matters because the Crown of Spain lost to the New-Mexican Government whatever right it had to the lands. No legislation modifying the laws of Spain or that subject was ever enacted. I was never in the Papago country, in Sonora, Mexico. I don't think there is any office in this country corresponding with that of prefecto politico in Mexico but I am not an expert on American law. As far as his duties are concerned a

perfecto politico in a district must be familiar with the laws of that district of Mexico. I have had no litigation directly
 635 involving the title of an Indian pueblo but have been called upon to pass on titles which necessarily involved titles to land belonging to pueblos de Indios. Pueblos de Indios are entirely different and separate institutions from Spanish pueblos and the laws pertaining to a Spanish pueblo would not apply to a pueblo of Indians. The proclamation by President Juarez, of September 30, 1867, was an order to be carried out regarding individual Indians but not pueblos de Indios the pueblos de Indios having already been dissolved as legal entities by other previous laws at that time. It was discretionary with the executive power to give the lands, but it was the policy of the government to give them such lands as they would need as individuals. The date to which I am referring was one in which the President of Mexico had extraordinary powers, which meant that he was vested with the power of legislating as it were, as well as enforcing the law. I held the position which corresponds with your Secretary of the Interior in America only 15 days. Now this proclamation of President Juarez in 1867 had to do with individual Indians on the land because at that time the communities of Indians had been dissolved—they had no legal entity. There were no pueblos de Indios at that time.

"Q. Have you ever known of any Spanish or Mexican grants in which the government granted to some private person land on which Indians were actually living at the time? A. Comprehending the Indian territories? There were several cases in which the government fixed certain boundaries for a concession or grant, in which there were pueblos, that is a fact."

I don't know whether in any such grants Indians were living who had not been recognized as pueblos de Indios. All the property, or a great part of the property in Mexico belonged in 1856 to different communities or legal entities as distinct from personal individuals, so much so, some of the historians thought there was two-thirds of this real property in the possession of communities or legal entities. The main part of these communities was the Catholic

636 Church in its different forms as a Catholic Church, as a convent, as a certain religious order, or as a certain parsonage, etc., there were other institutions private institutions under the patronage of the church—there were also the civil communities, the municipalities, the pueblos de Indios and some other sorts of communities; and as all the real estate or a great deal of the real estate was so covered by legal entity ownership the property was in mortmain; and the economic condition of the country was very unsatisfactory and for that reason it was thought convenient for the country to destroy the mortmain and in 1856 there came the law named "Desamortization", which name means destruction of the mortmain by which all communities of legal entities, with the exception of the Federal Government, the State Government and the municipalities were destroyed and among the communities so destroyed came the pueblo de Indios as legal entities and so it was

MAPS

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WHERE PEACE REIGNS SUPREME. SAN XAVIER

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11/22/22

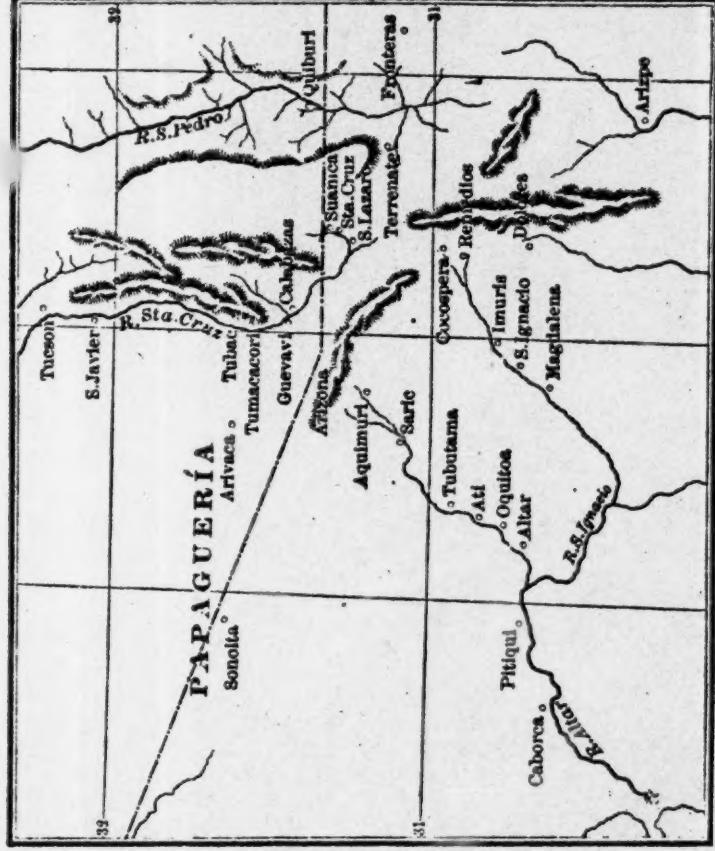
The map illustrates the Papaguería region, characterized by the Papaguería River and its extensive network of tributaries. Key locations include Tucson, S. Javier, S. Cruz, S. Ignacio, and S. Luis. The river system is depicted with winding lines, and various settlements and landmarks are marked along its course. The map also shows the Papaguería River flowing through the region, with various settlements and landmarks marked along its course.

The great difficulty, and one that caused Kino no end of anxiety and sorrow, but never discouragement, was that, besides the zealous padre himself, no one seemed really to believe in the docility and good faith of the Pimas, who were accused of being treacherous, hostile, and in league with the Apaches. Even Jesuit visitors, when once they were beyond the reach of Kino's magnetism and importunity, were disposed to regard the padre's projects as visionary and danger-

HIST. ABIZ. AND N. MEL. 23

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Guevavi, in Jesuit times called San Miguel and also for a time San Rafael, but by the Franciscans termed Santos Angeles, was a mission which, like Bac, dated back to 1732, or perhaps 1720, and in 1764-7 had 111 neophytes, or with its three visitas, 517. Padre Juan Crisóstomo Gil de Bernave was its minister for several years from 1768. He became president of the missions, and in 1773 was killed by the Indians of his new mission of Carrizal, Sonora.



MISSIONS OF ARIZONA, 1768-1846.

Pimas, had 33 men, rank and file, under Lieut. Roque Ibarra of Pitic since 1840, when Lieut. Salvador Moraga had been retired. There was a captain de indios, José Rosario. About half the garrison were absent at Cucurpe and Rayon. One soldier was a prisoner of the Apaches. A rancheria of Apaches, 169 souls under Francisco Coyotero, as chief, lived near the presidio. *Id.*, MS., no. 2. In 1843 the force remained as before. *Id.*, passim. In Dec. 1844, José Rosario, the captain of Indians, joined the pronunciamiento of the garrison at Ures in favor of Parede. *Id.*, *Doc. Hist. Son.*, MS., iii. 223-4.

MAPS

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ordered that the property that theretofore had belonged and in which the pueblos de Indios had a legal title, be distributed among the Indians making up those pueblos; and individually no order could be referred to pueblos de Indios except to carry out that law "desamortizacion."

"Q. Then this order or proclamation of 1867 by President Juarez was made so that if an Indian pueblo held the lands that had been destroyed by the proclamation of '56, then these individual Indians could come in and make proof, and if they proved it, could get their titles? A. Yes, I saw an instance of this. I mention those of the pueblos of Navajoa and Tesia regarding which the Federal Government ordered that this extension of acreage of 4 square leagues be granted to the whole pueblo of Navajoa and also to Tesia to be distributed among the Indians themselves and the order stated
637 that they would be given those 4 square leagues if the Indians had been in possession thereof, but no more than these 4 square leagues."

Redirect examination by Mr. Fraser:

These 4 square leagues was an exceptional measurement. Indians that had never been recognized under the laws of Mexico in 1853 would have no land rights.

638 Plaintiff's Exhibits Nos. 13-a, 14-a, 15-a, and 16-a and Defendants' Exhibits 8-a and 11-a are referred to in various parts of the record. For the convenience of Court and Counsel they are placed here at the end of the testimony for reference.

(Here follow exhibits marked pages 639, 640, 641, 642, 643, and 644.)

645 And thereupon counsel for the respective parties each announced his case closed.

The several exceptions hereinbefore set forth were duly and appropriately taken and allowed at the respective times set forth in this Statement of the Evidence, with the right of the Exceptant to have the benefit or benefits thereof.

The foregoing is the substance of all of the testimony and evidence, and all of the exhibits, which together with the pleadings in this cause, are all that was considered by this court as the basis for the final decree entered herein.

Whereupon, for the purpose of hearing the said cause upon appeal, the foregoing Statement of Evidence and Exhibits are accordingly

for that purpose approved and signed by the court, *in duplicate*, now for then, this 20th day of October, 1924.

By the court:

F. L. SIDDONS,
Justice.

Approved:

LOUIS KLEINDIENST,
Of Counsel for Plaintiff.
GEORGE A. H. FRASER,
Of Counsel for Defendants.

Endorsed on cover: District of Columbia Supreme Court. No. 4298. The Pueblo of Santa Rosa, appellant, vs. Albert B. Fall, Secretary of the Interior, et al. Court of Appeals, District of Columbia. Filed Feb. 25, 1925. Henry W. Hodges, clerk.

(5923)

Tuesday, February 2nd, A. D. 1926.

* * * * *

No. 4298

THE PUEBLO OF SANTA ROSA, Appellant,

vs.

ALBERT B. FALL, Secretary of the Interior, and WILLIAM
SPRY, Commissioner of the General Land Office

The argument in the above entitled cause was commenced by Mr. W. C. Reid, attorney for the appellant, and was continued by Mr. Geo. A. H. Fraser, attorney for the appellees, and was concluded by Mr. W. C. Reid, attorney for the appellant.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 4298

THE PUEBLO OF SANTA ROSA, Appellant,

vs.

ALBERT B. FALL, Secretary of the Interior, and WILLIAM
SPRY, Commissioner of the General Land Office, Ap-
pellees

Before Martin, Chief Justice; Robb and Van Orsdel,
Associate Justices

OPINION

VAN ORSDEL, Associate Justice.

Plaintiff, The Pueblo of Santa Rosa, filed a bill in equity in the Supreme Court of the District of Columbia to restrain defendant, the Secretary of the Interior, and the Commissioner of the General Land Office, from opening its lands to sale, entry, and settlement, as public lands of the United States.

It is averred in the bill that the lands were granted and conceded to the Pueblo of Santa Rosa "by the laws and customs of the Indians antedating the Spanish discovery of America, and also by the laws of Spain and Mexico"; that the lands involved were part of the territory ceded by Mexico to the United States under the Gadsden Treaty; that the inhabitants of this Pueblo have lived in communal life from time immemorial, and have governed their community with definite customs, having the force of law, which have been obeyed by the inhabitants; that they assemble in common counsel at stated intervals where the adult inhabitants of the Pueblo legislate on matters concerning its inhabitants, and establish rules and decisions for its Government, having the force of law.

It is further averred that Spain and Mexico, prior to the cession to the United States, at all times conceded to plaintiff from time immemorial the right to have a common name; the right to take, hold, manage, control, and dispose of real and personal property; the right to contract as a corporate entity by resolutions passed in common council, and through its officers and representatives in all matters concerning its interests, property, and affairs; the right to have perpetual succession; the right to sue and be sued as a corporate entity, and to appear and act as such in the Courts, and with government authorities; the right and power to generally maintain a permanent organized Government, and to make rules and laws binding upon the Pueblo and its inhabitants, and to elect officers who shall exercise such power and jurisdiction over the Pueblo and its property and inhabitants as may be provided by the laws, rules, and decisions, enacted at the common counsels of its inhabitants.

It is also averred in the bill that the plaintiff is in all respects similar to the Pueblo Indian Towns in Mexico, existing at the time of the Spanish discovery of America; that Spain, during all the period of its sovereignty over the territory, and at all times, recognized the ownership of the lands herein described by the Pueblo of Santa Rosa; that Mexico likewise recognized plaintiff's ownership of the land described, during the period of Mexican sovereignty, and recognized its inhabitants as Mexican citizens, enjoying all the property rights accorded citizens of Mex-

ico; and that such ownership and recognition by Mexico existed at the time of the cession to the United States of the territory embracing the lands in question.

It is then averred that in 1909, the Secretary of the Interior, designated plaintiff's lands as subject to entry under the Enlarged Homestead Act of February 19, 1909; that plaintiff in 1914 petitioned the Secretary to abstain from listing for entry, or sale, as part of the public domain, any of the lands belonging to plaintiff; that the Secretary, on June 11, 1914, replied, denying plaintiff's request on the ground that the inhabitants of the Pueblo had not such property right in the lands as was provided for and protected by the treaty, and held that the inhabitants of the Pueblo had only such rights in the use of the land as belongs to the nomadic Indian Tribes.

Plaintiff prayed generally that defendants be restrained from treating the land as public domain, and from exercising authority over it as such.

Defendants moved to dismiss the bill, which motion was sustained, and plaintiff, electing to stand upon the bill, appealed to this court. On hearing, this court, in *Pueblo of Santa Rosa vs. Lane*, 46 App. D. C. 411, sustained the bill as setting forth averments sufficient to establish that the plaintiff had, from time immemorial, consisted of Pueblo Indians who were civilized, sedentary, agricultural and pastoral, and who resided in permanent houses in a village of permanent location, built upon the lands described in the bill, which lands are situated in Pima County, Arizona. The Court in sustaining the bill, held in effect that the Pueblo of Santa Rosa was a body corporate with the right to sue and be sued, to own and hold property, real and personal, and to purchase and sell the same, subject only to the guardianship of the United States, as exercised generally over the Indian Pueblos in New Mexico.

When the case was argued in this court, counsel for the defendants in open court announced that a final decree might be entered, in as much as the defendants did not desire to answer or plead further in the case below. Accordingly, this court reversed the decree of the Supreme Court and remanded the cause with "directions to enter a decree restraining defendants from offering for entry

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or sale as part of the public domain of the United States any of said lands under any land or mineral land law of the United States, and requiring, in so far as lies within the power of the Land Department, to prevent, in as large degree as possible, any further infringement upon the property rights of the plaintiff."

The case was appealed by defendants to the Supreme Court of the United States, and when it came on for hearing in that Court, the Solicitor General, on behalf of the defendant officers, notwithstanding the oral stipulation made in this court, insisted upon the right of the defendants to answer in the Supreme Court of the District. The Court in its opinion, *Lane vs. Pueblo of Santa Rosa*, 249 U. S. 110, sustained the bill as containing averments sufficient to establish that plaintiff is a Pueblo with all rights, powers, and privileges pertaining thereto; but held that "the Court of Appeals ought not to have directed the entry of a final decree awarding a permanent injunction against the defendants. They were entitled to an opportunity to answer to the merits, just as if their motion to dismiss had been overruled in the Court of first instance. By the direction given they were denied such an opportunity, and this was a plain and prejudicial error." The Court accordingly reversed the decree of both Courts and remanded the case to the Supreme Court of the District, with directions to overrule the motion to dismiss, to afford the defendants an opportunity to answer the bill, and to grant an order restraining defendants from offering, listing, or disposing of the lands in question pending a final decree.

Defendants, on remand to the court below, filed another motion to dismiss the bill "for lack of authority on the part of the attorneys of record for the alleged plaintiff to represent their alleged client or to maintain this suit." On the same date, defendants answered the bill, denying each of the material allegations therein contained; and thereafter the Court entered an order postponing the decision on the motion to dismiss until the final hearing of the case on its merits. On final hearing, the motion to dismiss was overruled and the Court entered a decree on the merits dismissing the bill. No appeal was taken by defendants from that portion of the decree overruling the motion, challenging the authority of counsel for plaintiff to represent their

client. Plaintiff accordingly limited the present appeal to that portion of the decree dismissing the bill.

When this case came on for final hearing in the court below, there was a dual trial. The right of counsel to appear for plaintiff was challenged by a motion to dismiss the bill; and the issue of plaintiff's right to a decree was raised by answer to the bill. The court combined the case on the motion to dismiss and on bill and answer and heard testimony thereon both as to the merits and in support of the motion. The case was decided by denying the motion to dismiss and entering a decree for the defendants on the merits. The opinion of the court below was confined to holding in effect that counsel for plaintiff have no authority to represent it. It was error to hear the motion as a part of the case on its merits. A motion challenging the right of counsel to appear for a litigant in no way effects the merits of the case. This question can be raised by a procedure well known to the practice; namely, upon a preliminary motion supported by affidavits setting forth the facts and asking for a rule requiring counsel to show cause why the objections to his appearance should not be sustained. It cannot be raised by answer, or by a motion to dismiss in equity, since a plea goes to the merits of the case, while the proceeding challenging the authority of an attorney to appear is between different parties and involves a preliminary matter collateral to the issue on the merits. It in no way effects the right of the party whose attorney is challenged, should the motion be sustained, to employ other and proper counsel to represent him in the further conduct of his case.

The rule is well stated in the case of *Gage vs. Bell*, 124 Fed. 371, 379, as follows: "Necessarily it is the practice in all courts to treat the attorney appearing for a litigant as duly authorized thereto by that litigant. The authority to appear must exist, to be sure, but it is conclusively presumed, or assumed, rather, by the court, unless it is formally, and by a special proceeding known to the practice, called in question. 3 Enc. L. (2d Ed.) 349; *Id.* 375. The defendant cannot, by answer or plea, set up want of authority in the plaintiff's attorney, but he must make a rule upon him to show his authority, supported by affidavit as to the facts. *Id.* 377, citing *Martin vs. Walker*, Abb. Adm., 579 Fed. Cas. No. 9170; *Howe vs. Anderson* (Ky. 1890) 14

S. W., 216; *Hill vs. Mendenhall*, 21 Wall., 453, 22 L. Ed. 616. The reasons for this rule are well illustrated by this case. The courts could not conveniently do the business of litigation if either litigant could capriciously embody in his pleadings the collateral matter of the authority of the attorneys, respectively, to appear and file their pleadings. Every litigation would degenerate into a preliminary inquiry about the attorney's dealings with his client."

Until the contrary is shown, counsel in a case will be presumed by the court to appear by proper authority, and this presumption cannot be removed by a collateral attack in the pleadings. It is a preliminary matter to be disposed of before proceeding to the merits of the case. It was, therefore, not only improperly injected into the present case, but it came too late.

Coming to the case on its merits, the word "Pueblo," as derived from its Spanish origin, is not enveloped in mystery nor is it used or applied in any technical sense. It broadly means a small settlement or gathering of people, and applies equally, whether the settlement be a small collection of Spaniards or Indians. It was created as the result of communal occupation of land for a common purpose, originally occupied by the people through their own volition. A Pueblo could thus be formed without any grant or charter. It means merely a settlement with a steady community. A Pueblo is defined in the *Partidas* Law 1, Book 2, Law 5, as follows: "A pueblo is the name given to a community of people of every kind of the country where they are gathered together; and if for ten or twenty years they have badly done anything by way of custom, the laws of the land knowing it, and not objecting, and approving, the pueblo, whatever it is, or the greater part of it, can do that thing, and it must be held and protected by custom."

The title of the Indian inhabitants of a pueblo in Mexico has been recognized not only by the Mexican but the Spanish laws, and such recognition rests not necessarily upon title by grant or charter from the Crown, but it may be established and was frequently established by prescription. Prescriptive right, as against the Crown, existed and was recognized by the Spanish laws. In *Carino vs. Insular Government*, 212 U. S. 449, the court, considering the legality of titles established by prescription against the Spanish

Government in the Philippine Islands, said: "Prescription is mentioned again in the royal cedula of October 15, 1754, cited in 3 Philippine 546: 'Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription.' It may be that this means possession from before 1,700, but at all events the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines, in regard to lands over which Spain had only a paper sovereignty."

There can be no question, we think, that prior to the cession under the Gadsden Treaty, the Papago Indians had acquired a title which was subject to recognition by the Government of Mexico. It is conceded, however, that no proceedings were ever instituted to have this title established or made a matter of record; hence, with the cession to the United States, the Indians came to us with no paper title; with nothing more than the prescriptive right which could have been exercised by them as recognized citizens of Mexico.

This brings us to the consideration of the main question in this case, whether or not this mere prescriptive right was so protected by the terms of the Gadsden Treaty, or the treaty of Guadalupe Hidalgo, as to be enforceable in the courts. Article 6 of the Gadsden Treaty, 10 Stat. 1035, after stating that "no grants of land within the territory ceded by the first article of this treaty," dated later than September 1853, will be recognized as valid, continues, "or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico." On the former appeal the Supreme Court (249 U. S. 114) referring to the foregoing clause of the treaty, said: "In view of the very broad allegations of the bill, the accuracy of which has not been challenged as yet, we have assumed in what has been said that the plaintiff's claim was valid in its entirety under the Spanish and Mexican laws, and that it encounters no obstacle in the concluding provision of the sixth article of the Gadsden Treaty, but no decision on either point is intended. Both involve questions not covered by the briefs

or the discussion at the bar and are left open to investigation and decision in the further progress of the cause."

It is urged, however, that the Papago Indians are secured in their rights under the Gadsden Treaty by the incorporation therein of article 9, of the treaty of Guadalupe Hidalgo of February 2, 1848. 9 Stat. 922. Article 9 of that treaty provides as follows: "Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceeding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

This in no way relates to the concluding provision of article 6 of the Gadsden Treaty, since the above provision refers to the right of Mexican citizens residing within the ceded territory to elect within one year whether they would remain citizens of Mexico or become citizens of the United States. This provision was merely to protect them, pending such election, in their liberty and property, and it placed no limit whatever upon the provision of the latter treaty here under consideration.

It follows that, had the record title been established in Mexico to which this Pueblo was clearly entitled, it could not be divested by the sort of evidence adduced in this case. The mere recollection of aged Indians as to the present day habits and customs of their people would not overcome the unanswerable record of rights accruing from time immemorial, as shown by Spanish and Mexican records and traditions, reviewed at length in our former opinion. (46 App. D. C. 411.) However, the concluding clause of article six of the Gadsden Treaty, under the evidence adduced below, forbids relief by the courts. The power lies alone in Congress to extend to these people protection similar to that thrown around the pueblos of New Mexico, who were more fortunate than plaintiff, merely in that they possessed a paper title from Mexico.

The decree is affirmed with costs.

Mondáý, April 5th, A. D. 1926.

* * * * *

No. 4298, April Term, 1926

THE PUEBLO OF SANTA ROSA, Appellant,

vs.

ALBERT B. FALL, Secretary of the Interior, and WILLIAM
SPRY, Commissioner of the General Land Office

Appeal from the Supreme Court of the District of
Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Van Orsdel, April 5, 1926.

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IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 4298

THE PUEBLO OF SANTA ROSA, Appellant,

vs.

ALBERT B. FALL, Secretary of the Interior, and WILLIAM
SPRY, Commissioner of the General Land Office, Ap-
pellees

MOTION FOR RE-HEARING AND MODIFICATION OF DECREE

To the Honorable the Chief Justice and the Associate Jus-
tices of the above-entitled court:

Comes now the appellant and by its attorneys makes this its Motion to the above entitled Court for a Re-hearing and modification of the decree rendered in the above cause on

the 5th day of April, 1926, to read in favor of appellant on the ground:

That the decree should be in favor of the appellant although as held by the court its title is such that it should be recorded in the archives of Mexico under the sixth Article of the Gadsden Treaty.

That the appellant's rights are protected and the defendants are prohibited from encroaching upon its lands by the act of Congress creating the Surveyor General for New Mexico approved July 22, 1854,

10 U. S. Statutes at Large, page 308,

and the report to the Secretary of the Interior transmitted by the Surveyor General, pursuant to said statute, which report is transmitted to Congress in the report of the Secretary of the Interior found in Senate Documents, Second Session 37th Congress, 1861-1862, page 582.

In connection herewith, appellant respectfully submits for the consideration of the Court its points and authorities to support this motion.

Respectfully submitted, W. C. Reid, Louis Klein-
dienst, Levi H. David, Attorneys for Appellant

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 4298

THE PUEBLO OF SANTA ROSA, Appellant,

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SPRY, Commissioner of the General Land Office, Ap-
pellees

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
REHEARING AND MODIFICATION OF DECREE

Preliminary

The opinion of this Court holds that the appellant was the owner of the land under the laws of Mexico at the time that the Gadsden Treaty was made; that Article Six of the

treaty precluded the appellant from obtaining the relief sought.

Argument

Under the ruling of the Court appellant has no disposition to re-argue the point that its title was such that did not require registration under the Sixth Article of the Gadsden Treaty, and no reference should hereafter be made on this point. The Gadsden Treaty became a law June 30th, 1854. Subsequent to the time that the Gadsden Treaty was approved and became a law, the Congress passed an act which was approved July 22, 1854, creating the Surveyor General of New Mexico, at which time all the territory ceded to the United States under the Gadsden Treaty had become a part of New Mexico. This act also prescribed the duties of the Surveyor General, as follows:

"Shall make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in said Pueblos, and the nature of their titles to the lands. Such report to be made according to form which may be prescribed by the Secretary of the Interior, which report shall be laid before Congress for such action as may be deemed just and proper with a view to confirming bona fide grants, and give full effect to the treaty of 1848 between the United States and Mexico and until final action by Congress on such claims all lands connected thereby shall be reserved from sale or other disposal by the Government and shall not be subject to the donation granted by the provision of this act."

10 U. S. Statutes at Large, 308.

Pursuant to the provisions of this act the Commissioner of the General Land Office issued instructions to the Surveyor General in behalf of the Secretary of the Interior on the 21st day of August, 1854, which instructions gave the Surveyor General judicial powers and also provided:

"In the case of any town lot, farm lot, or pasture lots, held under a grant from any corporation or town to which lands maybe granted for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof, or in the case of any City, town, or Village lot

which City, town or village existed at the time possession was taken of New Mexico by the Authorities of the United States, the claim to the same maybe presented by the Corporate authorities, or where the land on which the said City, town or village was originally granted to an individual, the claim maybe presented by or in the name of such individual, and the fact being proven to you of the existence of such City, town, or village at the period when the United States took possession may be considered by you as prima facie evidence of a grant to such corporation, or the individuals under whom the lot holders claim, and where any such town or village shall be in existence at the passage of the act of July 22nd, 1854, the claim for the land embraced within the limits of the same, maybe made and proved up before you by the Corporate authority of the said City, town or village—”

Complying with these instructions the Surveyor General reported his decision and findings to the Secretary of the Interior which report was incorporated into the report of the Secretary of the Interior to Congress, which last report clearly shows that the appellant was a pueblo at that time located in the territory of Arizona. Arizona having at that time been taken from the territory of New Mexico. This report is found in Senate Documents, 37th Congress, 1861-1862, Series 1117, page 578 to 582 and reads as follows:

a hunting ground for the savage—a result attributed to the scarcity of imported provisions, and the failure to discover the rich gold fields or mines whose existence had been so confidently reported; but especially, I apprehend, to the hostilities of the Indians, so numerous infesting that region. It is to be hoped that the accounts and the hopes of Captain Baker may yet be fully realized, and the country thereaway be peopled with the populous and flourishing settlement which it is said to be capable of sustaining.

The eighth section of the act of 1854, organizing this office, requires the surveyor general to "make a report in regard to all the pueblos existing in the Territory, showing the extent and locality of each, stating the number of the inhabitants in the said pueblos respectively, and the nature of their titles to their lands." In accordance with this requirement, I append a tabular statement, embodying, as fully as they could be collected, these statistics of the pueblos, which I believe have not heretofore been collected and reported, as required by the law. The statement embraces, I believe, all the pueblos, whether in New Mexico proper or in Arizona. In alluding to the Pueblo Indians, I take occasion to remark that there is considerable complaint among them growing out of intrusions upon their lands by the white citizens of the country.

In suggesting the necessity of some legal provision for the protection of the rights of these simple-minded but virtuous and faithful people, the Pueblo Indians, I need only, in support of the recommendation, make the following extract from a letter on file in this office from one of the former Pueblo agents: "The Mexican people have in many instances set up claims to lands clearly within their (the Pueblos') limits—in some instances almost in the centre of the pueblo. The consequence is that much ill feeling exists among them. . . . There are others of the Pueblos in the same situation; they complain bitterly of the encroachments of Mexicans upon them."

The translator in the land claim branch of this office has prepared, from the archives of the office, the accompanying tabular list of all the captains general, governors, &c., holding office in New Mexico under the crown of Spain or the republic of Mexico, and all whom, it is supposed, were authorized to make grants of the public lands. The list is made in compliance with instructions from the General Land Office, and from memoranda collected from time to time during the last year in researches among the voluminous old Spanish archives on file here; and though it may doubtless hereafter be to some extent extended, it is now as perfect as the facilities and data for preparing it permitted. As a paper for reference it is as interesting as it is important.

Accompanying I have the honor to transmit a sketch map of all the surveys executed and returned to this office, except of the four heretofore mentioned as just returned. It will be observed that this map has been materially improved, as compared with the last and the previous ones. The draughtsman has bestowed great pains upon it, having collected all the information from the reports and maps of military topographical explorations in the territory, and availed himself of much other reliable data. The degrees of latitude and longitude have been marked upon it, the localities of important points laid down, and those of others corrected, and the courses of streams corrected and of new ones delineated. Indeed, aside from its character as a sketch of the surveys in this district, it may, as a map of general reference, be considered the best one of New Mexico extant. One copy of this map has been furnished by request of the commander of this military division at headquarters, and another to the Superintendent of Indian Affairs. I fully indorse the remark of the honorable commissioner in one of his recent letters, that it is the duty of the officers of the government to endeavor to retrench rather than expand the necessary expenditures in the public service. But while mindful of the correctness and propriety of the suggestion, I feel that I could not, in view of the exigencies of the service and of the great expense of

living in this country, have estimated at lower figures the respective appropriations required for the ensuing fiscal year.

The business of the office, especially in the recording of old field notes, is very considerably behind, and it is important that it be brought up; and comparatively very little of the public land has been surveyed.

Now that I am about to retire from the administration of this office, after a service therein of precisely one year to-day, I deem the occasion not inappropriate, in severing my official connexion with them, to pay a deserved compliment to the gentlemen employed in the office, a compliment that may best be expressed by saying that, both in the surveying and the Spanish or land claim branch of the office, they have uniformly exhibited the most gratifying degree of competence and faithfulness in the discharge of their various duties.

Very respectfully, your obedient servant,

A. P. WILBAR,
Surveyor General of New Mexico.

Hon. J. M. EDMUNDS,

Commissioner General Land Office, Washington City, D. C.

REPORT OF THE SECRETARY OF THE INTERIOR

Statement of surveys executed under Messrs. Pelham and Clements, deputy surveyors, under contract with the surveyor general of New Mexico, and paid for out of the appropriation of June 25, 1860, for surveys in New Mexico.

Under contract of—	Survey of —	Miles surveyed.	Cost of survey.	When surveyed.	Appropriation.	Remaining unexpended.
Sept. 5, 1860	The claim of Preston Beck, Jr.	131 06 73	\$1,966 26	September, 1860.	\$10,000 00	
do.....	The town of Anton Chico.	93 19 96	1,398 74	Sept. & Oct., 1860.		
do.....	The town of Las Vegas.	129 02 39	1,800 44	October, 1860.		
do.....	The claim of Bonachino Vigil. — Las Tijeras.	19 11 70	287 19	September, 1860.		
do.....	The claim of E. W. Eaton.	35 15 90	527 98	November, 1860.		
do.....	The connections with the public surveys.	3 63 97	56 99	March & April, 1861.		
Nov. 15, 1860	The lines of the public surveys.	277 53 69	3,332 05	Nov. & Dec., 1860.		\$630 35
Total.....	.....	680 14 34	9,369 65	.....	10,000 00	630 35

A. F. WILLIAMS, Surveyor General.

SURVEYOR GENERAL'S OFFICE, Santa Fe, New Mexico, August 29, 1861.

Statement showing respectively the names of all the Indian pueblos in New Mexico, with their localities, populations, wealth, &c., and the time when their land claims were confirmed by Congress, and when surveyed, and the areas thereof.

No.	Name of pueblo.	Immigration in this office.	Locality—county.	Population—census of 1880.	Personal estate owned in pueblo.	Claims allowed.	Claims verified.	Area of claim.	Remarks.
1	Jesus	A	Santa Ana	650	\$159,000	Dec. 9, 1856	August	17,310.45	On Jesus river, on a rock 500 feet high, 15 miles southwest of Laguna; nearest water, 1 mile.
2	Acuña	B	Valencia	323	44,764	do	do	do	On Rio Grande.
3	San Juan	C	Rio Arriba	341	14,506	do	July	12,544.77	On Rio Grande.
4	Pinar	D	do	360	2,283	do	July	17,460.69	On Rio Pinar.
5	San Felipe	E	Santa Ana	360	27,340	do	Nov. and Dec.	24,708.94	On Rio Grande.
6	Pecos	F	San Miguel	360	do	do	July and Aug.	15,763.33	Pueblo deserted; remnant of people now living at Zuni and Jesus.
7	Cochiti	G	Santa Ana	179	115,438	do	Aug. and Sept.	94,956.50	On Rio Grande.
8	Santo Domingo	H	do	261	18,790	do	September	74,741.11	On Rio Grande.
9	Tano	I	do	363	do	do	do	do	Value of personal property included with that of Pinar.
10	Santa Clara	K	Rio Arriba	179	do	do	do	do	Value of personal property included with that of San Juan.
11	Tesuque	L	Santa Fe	97	3,570	do	do	do	On Tesuque creek, 6 miles north of Santa Fe.
12	Pueblito	M	do	154	2,610	do	June and July	12,471.12	On Rio Grande.
13	Pueblito	N	do	37	20	do	do	do	On Rio Grande.
14	Pueblito	O	Santa Ana	117	2,015	do	August	12,299.64	On Rio Grande.
15	Pueblito	P	Bernalillo	217	30,956	do	do	do	On Rio Grande.
16	Pueblito	Q	do	480	7,089	do	do	do	On Rio Grande.
17	Santa Fe	R	Santa Fe	104	5,310	do	do	do	On Rio Grande.
18	Laguna	S	Valencia	92	41,972	do	do	do	On Rio Grande.
19	Zuni	T	do	1,300	12,106	June 21, 1860	do	15,595.33	On San Juan river, 3 miles east of Pajarito.
20	Santa Ana	U	do	316	13,615	do	do	do	West of Albuquerque, 45 miles, on San Juan river.
21	San Xavier	V	do	140	6,325	do	do	do	On Rio Grande; no claim filed.
22	Marathon	W	do	140	do	do	do	do	On Rio Grande; no claim filed.
23	Marathon	X	do	140	do	do	do	do	On Rio Grande; no claim filed.
24	Marathon	Y	do	140	do	do	do	do	On Rio Grande; no claim filed.
25	Marathon	Z	do	140	do	do	do	do	On Rio Grande; no claim filed.
26	Marathon	AA	do	140	do	do	do	do	On Rio Grande; no claim filed.
27	Marathon	AB	do	140	do	do	do	do	On Rio Grande; no claim filed.
28	Marathon	AC	do	140	do	do	do	do	On Rio Grande; no claim filed.
29	Marathon	AD	do	140	do	do	do	do	On Rio Grande; no claim filed.
30	Marathon	AE	do	140	do	do	do	do	On Rio Grande; no claim filed.
31	Marathon	AF	do	140	do	do	do	do	On Rio Grande; no claim filed.
32	Marathon	AG	do	140	do	do	do	do	On Rio Grande; no claim filed.
33	Marathon	AH	do	140	do	do	do	do	On Rio Grande; no claim filed.
34	Marathon	AI	do	140	do	do	do	do	On Rio Grande; no claim filed.
35	Marathon	AJ	do	140	do	do	do	do	On Rio Grande; no claim filed.
36	Marathon	AK	do	140	do	do	do	do	On Rio Grande; no claim filed.
37	Marathon	AL	do	140	do	do	do	do	On Rio Grande; no claim filed.
38	Marathon	AM	do	140	do	do	do	do	On Rio Grande; no claim filed.
39	Marathon	AN	do	140	do	do	do	do	On Rio Grande; no claim filed.
40	Marathon	AO	do	140	do	do	do	do	On Rio Grande; no claim filed.
41	Marathon	AP	do	140	do	do	do	do	On Rio Grande; no claim filed.
42	Marathon	AQ	do	140	do	do	do	do	On Rio Grande; no claim filed.
43	Marathon	AR	do	140	do	do	do	do	On Rio Grande; no claim filed.
44	Marathon	AS	do	140	do	do	do	do	On Rio Grande; no claim filed.
45	Marathon	AT	do	140	do	do	do	do	On Rio Grande; no claim filed.
46	Marathon	AU	do	140	do	do	do	do	On Rio Grande; no claim filed.
47	Marathon	AV	do	140	do	do	do	do	On Rio Grande; no claim filed.
48	Marathon	AW	do	140	do	do	do	do	On Rio Grande; no claim filed.
49	Marathon	AX	do	140	do	do	do	do	On Rio Grande; no claim filed.
50	Marathon	AY	do	140	do	do	do	do	On Rio Grande; no claim filed.
51	Marathon	AZ	do	140	do	do	do	do	On Rio Grande; no claim filed.
52	Marathon	BA	do	140	do	do	do	do	On Rio Grande; no claim filed.
53	Marathon	BB	do	140	do	do	do	do	On Rio Grande; no claim filed.
54	Marathon	BC	do	140	do	do	do	do	On Rio Grande; no claim filed.
55	Marathon	BD	do	140	do	do	do	do	On Rio Grande; no claim filed.
56	Marathon	BE	do	140	do	do	do	do	On Rio Grande; no claim filed.
57	Marathon	BF	do	140	do	do	do	do	On Rio Grande; no claim filed.
58	Marathon	BG	do	140	do	do	do	do	On Rio Grande; no claim filed.
59	Marathon	BH	do	140	do	do	do	do	On Rio Grande; no claim filed.
60	Marathon	BI	do	140	do	do	do	do	On Rio Grande; no claim filed.
61	Marathon	BJ	do	140	do	do	do	do	On Rio Grande; no claim filed.
62	Marathon	BK	do	140	do	do	do	do	On Rio Grande; no claim filed.
63	Marathon	BL	do	140	do	do	do	do	On Rio Grande; no claim filed.
64	Marathon	BM	do	140	do	do	do	do	On Rio Grande; no claim filed.
65	Marathon	BN	do	140	do	do	do	do	On Rio Grande; no claim filed.
66	Marathon	BO	do	140	do	do	do	do	On Rio Grande; no claim filed.
67	Marathon	BP	do	140	do	do	do	do	On Rio Grande; no claim filed.
68	Marathon	BQ	do	140	do	do	do	do	On Rio Grande; no claim filed.
69	Marathon	BR	do	140	do	do	do	do	On Rio Grande; no claim filed.
70	Marathon	BS	do	140	do	do	do	do	On Rio Grande; no claim filed.
71	Marathon	BT	do	140	do	do	do	do	On Rio Grande; no claim filed.
72	Marathon	BU	do	140	do	do	do	do	On Rio Grande; no claim filed.
73	Marathon	BV	do	140	do	do	do	do	On Rio Grande; no claim filed.
74	Marathon	BW	do	140	do	do	do	do	On Rio Grande; no claim filed.
75	Marathon	BX	do	140	do	do	do	do	On Rio Grande; no claim filed.
76	Marathon	BY	do	140	do	do	do	do	On Rio Grande; no claim filed.
77	Marathon	BZ	do	140	do	do	do	do	On Rio Grande; no claim filed.
78	Marathon	CA	do	140	do	do	do	do	On Rio Grande; no claim filed.
79	Marathon	CB	do	140	do	do	do	do	On Rio Grande; no claim filed.
80	Marathon	CC	do	140	do	do	do	do	On Rio Grande; no claim filed.
81	Marathon	CD	do	140	do	do	do	do	On Rio Grande; no claim filed.
82	Marathon	CE	do	140	do	do	do	do	On Rio Grande; no claim filed.
83	Marathon	CF	do	140	do	do	do	do	On Rio Grande; no claim filed.
84	Marathon	CG	do	140	do	do	do	do	On Rio Grande; no claim filed.
85	Marathon	CH	do	140	do	do	do	do	On Rio Grande; no claim filed.
86	Marathon	CI	do	140	do	do	do	do	On Rio Grande; no claim filed.
87	Marathon	CJ	do	140	do	do	do	do	On Rio Grande; no claim filed.
88	Marathon	CK	do	140	do	do	do	do	On Rio Grande; no claim filed.
89	Marathon	CL	do	140	do	do	do	do	On Rio Grande; no claim filed.
90	Marathon	CM	do	140	do	do	do	do	On Rio Grande; no claim filed.
91	Marathon	CN	do	140	do	do	do	do	On Rio Grande; no claim filed.
92	Marathon	CO	do	140	do	do	do	do	On Rio Grande; no claim filed.
93	Marathon	CP	do	140	do	do	do	do	On Rio Grande; no claim filed.
94	Marathon	CQ	do	140	do	do	do	do	On Rio Grande; no claim filed.
95	Marathon	CR	do	140	do	do	do	do	On Rio Grande; no claim filed.
96	Marathon	CS	do	140	do	do	do	do	On Rio Grande; no claim filed.
97	Marathon	CT	do	140	do	do	do	do	On Rio Grande; no claim filed.
98	Marathon	CU	do	140	do	do	do	do	On Rio Grande; no claim filed.
99	Marathon	CV	do	140	do	do	do	do	On Rio Grande; no claim filed.
100	Marathon	CW	do	140	do	do	do	do	On Rio Grande; no claim filed.
101	Marathon	CX	do	140	do	do	do	do	On Rio Grande; no claim filed.
102	Marathon	CY	do	140	do	do	do	do	On Rio Grande; no claim filed.
103	Marathon	CZ	do	140	do	do	do	do	On Rio Grande; no claim filed.
104	Marathon	DA	do	140	do	do	do	do	On Rio Grande; no claim filed.
105	Marathon	DB	do	140	do	do	do	do	On Rio Grande; no claim filed.
106	Marathon	DC	do	140	do	do	do	do	On Rio Grande; no claim filed.
107	Marathon	DD	do	140	do	do	do	do	On Rio Grande; no claim filed.
108	Marathon	DE	do	140	do	do	do	do	On Rio Grande; no claim filed.
109	Marathon	DF	do	140	do	do	do	do	On Rio Grande; no claim filed.
110	Marathon	DG	do	140	do	do	do	do	On Rio Grande; no claim filed.
111	Marathon	DH	do	140	do	do	do	do	On Rio Grande; no claim filed.
112	Marathon	DI	do	140	do	do	do	do	On Rio Grande; no claim filed.
113	Marathon	DJ	do	140	do	do	do	do	On Rio Grande; no claim filed.
114	Marathon	DK	do	140	do	do	do	do	On Rio Grande; no claim filed.
115	Marathon	DL	do	140	do	do	do	do	On Rio Grande; no claim filed.
116	Marathon	DM	do	140	do	do	do	do	On Rio Grande; no claim filed.
117	Marathon	DN	do	140	do	do	do	do	On Rio Grande; no claim filed.
118	Marathon	DO	do	140	do	do	do	do	On Rio Grande; no claim filed.
119	Marathon	DP	do	140	do	do	do	do	On Rio Grande; no claim filed.
120	Marathon	DQ	do	140	do	do	do	do	On Rio Grande; no claim filed.
121	Marathon	DR	do	140	do	do	do	do	On Rio Grande; no claim filed.
122	Marathon	DS	do	140	do	do	do	do	On Rio Grande; no claim filed.
123	Marathon	DT	do	140	do	do	do	do	On Rio Grande; no claim filed.
124	Marathon	DU	do	140	do	do	do	do	On Rio Grande; no claim filed.
125	Marathon	DV	do	140	do	do	do	do	On Rio Grande; no claim filed.
126	Marathon	DW	do	140	do	do	do	do	On Rio Grande; no claim filed.
127	Marathon	DX	do	140	do	do	do	do	On Rio Grande; no claim filed.
128	Marathon	DY	do	140	do	do	do	do	On Rio Grande; no claim filed.
129	Marathon	DZ	do	140	do	do	do	do	On Rio Grande; no claim filed.
130	Marathon	EA	do	140	do	do	do	do	On Rio Grande; no claim filed.
131	Marathon	EB	do	140	do	do	do	do	On Rio Grande; no claim filed.
132	Marathon	EC	do	140	do	do	do	do	On Rio Grande; no claim filed.
133	Marathon	ED	do	140	do	do	do	do	On Rio Grande; no claim filed.
134	Marathon	EE	do	140	do	do	do	do	On Rio Grande; no claim filed.
135	Marathon	EF	do	140	do	do	do	do	On Rio Grande; no claim filed.
136	Marathon	EG	do	140	do	do	do	do	On Rio Grande; no claim filed.
137	Marathon	EH	do	140	do	do	do	do	On Rio Grande; no claim filed.
138	Marathon	EI	do	140	do	do	do	do	On Rio Grande; no claim filed.
139	Marathon	EJ	do	140	do	do	do	do	On Rio Grande; no claim filed.
140	Marathon	EK	do	140	do	do	do	do	On Rio Grande; no claim filed.
141	Marathon	EL	do	140	do	do	do	do	On Rio Grande; no claim filed.
142	Marathon	EM	do	140	do	do	do	do	On Rio Grande; no claim filed.
143	Marathon	EN	do	140	do	do	do	do	On Rio Grande; no claim filed.
144	Marathon	EO	do	140	do	do	do	do	On Rio Grande; no claim filed.
145	Marathon	EP	do	140	do	do	do	do	On Rio Grande; no claim filed.
146	Marathon	EQ	do	140	do	do	do	do	On Rio Grande; no claim filed.
147	Marathon	ER	do	140	do	do	do	do	On Rio Grande; no claim filed.
148	Marathon	ES	do	140	do	do	do	do	On Rio Grande; no claim filed.
149	Marathon	ET	do	140	do	do	do	do	On Rio Grande; no claim filed.
150	Marathon	EU	do	140	do	do	do	do	On Rio Grande; no claim filed.
151	Marathon	EV	do	140	do	do	do	do	On Rio Grande; no claim filed.
152	Marathon	EW	do	140	do	do	do	do	On Rio Grande; no claim filed.
153	Marathon	EX	do	140	do	do	do	do	On Rio Grande; no claim filed.
154	Marathon	EY	do	140	do	do	do	do	On Rio Grande; no claim filed.
155	Marathon	EZ	do	140	do	do	do	do	On Rio Grande; no claim filed.
156	Marathon	FA	do	140	do	do	do	do	On Rio Grande; no claim filed.
157	Marathon	FB</							

11—Continued.

No.	Name of parish.	Localization in this section.	Locality—country.	Population—number of individuals.	Personal estate owned in parish.	Cities when considered.	Cities when surveyed.	Area of claim.	Remarks.
1	Orleans	.....	Lat. 29° 4' N. Long. 90° 30' W.	.....	.....	.....	.....	.....	Comparatively very little is known of these Indians; they have occupied the parish from time immemorial; not known whether they have or ever had any written title to their lands. Their parishes, like that of Acousa, are situated on the tops of high rocks or hills.
2	St. Charles	.....	.....	.....	.....	.....	.....	.....
3	St. James	.....	.....	.....	.....	.....	.....	.....	{ The Pigeons inhabit the country between Tereno and the Union of the West and between the flats and the river. Unusual boundary lines, and are similar in nearly all respects to the Pigeons, speaking the same dialect, &c.
4	St. John	.....	.....	.....	.....	.....	.....	.....
5	St. Louis	.....	.....	.....	.....	.....	.....	.....
6	St. Mary	.....	.....	.....	.....	.....	.....	.....
7	St. Peter	.....	.....	.....	.....	.....	.....	.....
8	St. Thomas	.....	.....	.....	.....	.....	.....	.....
9	St. Vincent	.....	.....	.....	.....	.....	.....	.....
10	St. George	.....	.....	.....	.....	.....	.....	.....
11	St. Andrew	.....	.....	.....	.....	.....	.....	.....
12	St. Nicholas	.....	.....	.....	.....	.....	.....	.....
13	St. Basil	.....	.....	.....	.....	.....	.....	.....
14	St. Constantine	.....	.....	.....	.....	.....	.....	.....
15	St. Helena	.....	.....	.....	.....	.....	.....	.....
16	St. Agatha	.....	.....	.....	.....	.....	.....	.....
17	St. Barbara	.....	.....	.....	.....	.....	.....	.....
18	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
19	St. Ann	.....	.....	.....	.....	.....	.....	.....
20	St. Rose	.....	.....	.....	.....	.....	.....	.....
21	St. Ursula	.....	.....	.....	.....	.....	.....	.....
22	St. Catherine	.....	.....	.....	.....	.....	.....	.....
23	St. Margaret	.....	.....	.....	.....	.....	.....	.....
24	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
25	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
26	St. Ann	.....	.....	.....	.....	.....	.....	.....
27	St. Rose	.....	.....	.....	.....	.....	.....	.....
28	St. Ursula	.....	.....	.....	.....	.....	.....	.....
29	St. Catherine	.....	.....	.....	.....	.....	.....	.....
30	St. Margaret	.....	.....	.....	.....	.....	.....	.....
31	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
32	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
33	St. Ann	.....	.....	.....	.....	.....	.....	.....
34	St. Rose	.....	.....	.....	.....	.....	.....	.....
35	St. Ursula	.....	.....	.....	.....	.....	.....	.....
36	St. Catherine	.....	.....	.....	.....	.....	.....	.....
37	St. Margaret	.....	.....	.....	.....	.....	.....	.....
38	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
39	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
40	St. Ann	.....	.....	.....	.....	.....	.....	.....
41	St. Rose	.....	.....	.....	.....	.....	.....	.....
42	St. Ursula	.....	.....	.....	.....	.....	.....	.....
43	St. Catherine	.....	.....	.....	.....	.....	.....	.....
44	St. Margaret	.....	.....	.....	.....	.....	.....	.....
45	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
46	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
47	St. Ann	.....	.....	.....	.....	.....	.....	.....
48	St. Rose	.....	.....	.....	.....	.....	.....	.....
49	St. Ursula	.....	.....	.....	.....	.....	.....	.....
50	St. Catherine	.....	.....	.....	.....	.....	.....	.....
51	St. Margaret	.....	.....	.....	.....	.....	.....	.....
52	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
53	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
54	St. Ann	.....	.....	.....	.....	.....	.....	.....
55	St. Rose	.....	.....	.....	.....	.....	.....	.....
56	St. Ursula	.....	.....	.....	.....	.....	.....	.....
57	St. Catherine	.....	.....	.....	.....	.....	.....	.....
58	St. Margaret	.....	.....	.....	.....	.....	.....	.....
59	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
60	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
61	St. Ann	.....	.....	.....	.....	.....	.....	.....
62	St. Rose	.....	.....	.....	.....	.....	.....	.....
63	St. Ursula	.....	.....	.....	.....	.....	.....	.....
64	St. Catherine	.....	.....	.....	.....	.....	.....	.....
65	St. Margaret	.....	.....	.....	.....	.....	.....	.....
66	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
67	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
68	St. Ann	.....	.....	.....	.....	.....	.....	.....
69	St. Rose	.....	.....	.....	.....	.....	.....	.....
70	St. Ursula	.....	.....	.....	.....	.....	.....	.....
71	St. Catherine	.....	.....	.....	.....	.....	.....	.....
72	St. Margaret	.....	.....	.....	.....	.....	.....	.....
73	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
74	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
75	St. Ann	.....	.....	.....	.....	.....	.....	.....
76	St. Rose	.....	.....	.....	.....	.....	.....	.....
77	St. Ursula	.....	.....	.....	.....	.....	.....	.....
78	St. Catherine	.....	.....	.....	.....	.....	.....	.....
79	St. Margaret	.....	.....	.....	.....	.....	.....	.....
80	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
81	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
82	St. Ann	.....	.....	.....	.....	.....	.....	.....
83	St. Rose	.....	.....	.....	.....	.....	.....	.....
84	St. Ursula	.....	.....	.....	.....	.....	.....	.....
85	St. Catherine	.....	.....	.....	.....	.....	.....	.....
86	St. Margaret	.....	.....	.....	.....	.....	.....	.....
87	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
88	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
89	St. Ann	.....	.....	.....	.....	.....	.....	.....
90	St. Rose	.....	.....	.....	.....	.....	.....	.....
91	St. Ursula	.....	.....	.....	.....	.....	.....	.....
92	St. Catherine	.....	.....	.....	.....	.....	.....	.....
93	St. Margaret	.....	.....	.....	.....	.....	.....	.....
94	St. Mary Magdalen	.....	.....	.....	.....	.....	.....	.....
95	St. Elizabeth	.....	.....	.....	.....	.....	.....	.....
96	St. Ann	.....	.....	.....	.....	.....	.....	.....
97	St. Rose	.....	.....	.....	.....	.....	.....	.....
98	St. Ursula	.....	.....	.....	.....	.....	.....	.....
99	St. Catherine	.....	.....	.....	.....	.....	.....	.....
100	St. Margaret	.....	.....	.....	.....	.....	.....	.....

Estimated

Severina Journal's (1971),
Book IV, New Mexico, August 19, 1971.

A. P. WILSON, Surveyor General.

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Congress has not yet acted on this report and until it does the language of the Act of June 30, 1854, prohibits the defendant from selling or otherwise disposing of said lands.

It has been above set out that the last act referred to was subsequent to the Gadsden Treaty. Appellant now turns to another point to show that a subsequent statute supercedes a treaty.

“An act of Congress is equally the law of the land, and, in case of conflict will control a prior treaty. It is possible for Congress to directly abrogate or indirectly render ineffective the provisions of a treaty. This it may do by formal act or resolution directly abrogating the treaty or indirectly, by the enactment of legislation which is in conflict with the provision of the treaty.”

Vol. 38 Cyc. 947—Notes 71-72-73.

In view of the distances between the residence of attorneys and the short time within which appellant's motion must be filed, counsel are not permitted to go into this point as thoroughly as they would like.

We submit that the motion to modify the decree on the point involved here should be granted and that the opinion of the Court should grant the prayer of the complaint.

Respectfully submitted, W. C. Reid, Louis Kleindienst, Levi H. David, Attorneys for Appellant

[Endorsed:] No. 4298. In the Court of Appeals of the District of Columbia. The Pueblo of Santa Rosa, appellant, vs. Albert B. Fall, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, appellees. Motion by appellant for rehearing and modification, points, and authorities. W. C. Reid, Louis Kleindienst, Levi H. David, Attorneys for Appellant. Court of appeals, District of Columbia. Filed Apr. 29, 1926. Henry W. Hodges, Clerk.

Saturday, April 24th, A. D. 1926.

• • • • •

No. 4298

THE PUEBLO OF SANTA ROSA, Appellant,

VS.

ALBERT B. FALL, Secretary of the Interior, et al.

On consideration of the petition for a rehearing and modification in the above entitled cause, It is ordered by the Court that said petition be and the same is hereby denied.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 450, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The Pueblo of Santa Rosa, Appellant, vs. Albert B. Fall, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, No. 4298, April Term, 1926, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 28th day of May, A. D. 1926.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal of Court of Appeals, District of Columbia.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 25, 1926

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

And it is further ordered that this cause be, and the same is hereby, assigned for hearing on January 10th next, after the cases heretofore assigned for that day, on the issue as to the existence of authority of counsel who filed the bill to represent complainant.

(3490)

9
Office Supreme Court, U. S.
FILED
JUL 13 1888
WM. H. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1888.

No. 511

THE PUEBLO OF SANTA ROSA, PETITIONER,

VS.

**ALBERT B. FALL, SECRETARY OF THE INTERIOR, AND
WILLIAM SPEY, COMMISSIONER OF THE GENERAL
LAND OFFICE, RESPONDENTS.**

**PETITION FOR WRIT OF HABEAS CORPUS TO THE
COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA AND BRIEF IN SUPPORT
THEREOF.**

**HUDSON P. HIBBARD,
LOUIS KLEINDIENST,
W. C. MEED,**

Counsel for Petitioner.

LEVI H. DAVID,

Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No.

THE PUEBLO OF SANTA ROSA, PETITIONER,

vs.

ALBERT B. FALL, SECRETARY OF THE INTERIOR, AND
WILLIAM SPRY, COMMISSIONER OF THE GENERAL
LAND OFFICE, RESPONDENTS.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA.**

*To the Honorable the Chief Justice and Associate
Justices of the Supreme Court of the United States:*

Your petitioner, the Pueblo of Santa Rosa, respectfully petitions this Honorable Court to grant its writ of certiorari to the Court of Appeals of the District of Columbia and to remove therefrom to this Court for review the record in the case, there lately pending,

entitled *The Pueblo of Santa Rosa*, appellant therein, being petitioner herein, *v.* Albert B. Fall, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, appellees therein and respondents herein, said cause being No. 4298 on the docket of the said Court of Appeals.

The decree of the Court of Appeals of the District of Columbia was entered on April 5, 1926, affirming the decree of the Supreme Court of the District of Columbia, dismissing petitioner's (plaintiff's) bill of complaint (Rec., 431). On April 24, 1926, the Court of Appeals denied (Rec., 441) the application (Rec., 431-440) of the petitioner for rehearing and modification of the decree of the said Court of Appeals.

The opinion of the Court of Appeals is set forth in the transcript of record at pages 423-430. The opinion of the court is also reported in 54 *Washington Law Reporter*, 242-244.

A duly certified copy of the entire record of said cause is herewith presented.

The Matter Involved.

The treaty rights of some 6,000 Papago Indians to about 2,146,000 acres of desert land are now involved directly and indirectly in this case, as the Pueblo of Santa Rosa, situate within the Gadsden Purchase, is but one of 18 similar villages of Papago Indians.

The case has been in this Court before, and an opinion was written therein by Mr. Justice Van Devanter (*Lane, etc., v. Pueblo of Santa Rosa*, 249 U. S., 110, 114).

The case in the court below was a suit by petitioner praying for an injunction against the respondents and their successors in office to prevent encroachments upon petitioner's lands (Rec., 9).

The bill of complaint was filed in the Supreme Court of the District of Columbia on January 28, 1915 (Rec., 1-10), to which the respondents' predecessors filed a motion to dismiss (Rec., 11-12). The court of first instance granted said motion to dismiss (Rec., 22), whereupon petitioner appealed to the District Court of Appeals, in which court counsel for respondents, in open court, announced that a final decree might be entered, inasmuch as defendant did not desire to answer or plead further in the case below (Opinion, Court of Appeals, Rec., 425).

The Court of Appeals of the District of Columbia reversed the decree of the Supreme Court of the District and remanded the cause, with direction to enter a decree in favor of petitioner (plaintiff), which decision is reported and entitled *Pueblo of Santa Rosa v. Franklin K. Lane et al.*, 46 App. D. C., 411; 47 *Washington Law Reporter*, 374.

The respondents appealed from this decision to the Supreme Court of the United States and insisted that an opportunity be allowed to answer the bill in the court of first instance. This Court reversed both the decrees of the Court of Appeals of the District of Columbia and the Supreme Court of the District of Columbia and directed the latter court to proceed with the case not inconsistent with the opinion of this Court (249 U. S., 110-114).

The opinion of this Court, written by Mr. Justice Van Devanter, contains the following language (page 114):

"In view of the very broad allegations of the bill, the accuracy of which has not been challenged as yet, we have assumed, in what has been said, that the plaintiff's claim was valid in its entirety under the Spanish and Mexican laws, and that it encounters no obstacle in the concluding provision of the Sixth Article of the Gadsden Treaty, but no decision on either point is intended. Both involve questions not covered by the briefs or the discussion at the bar, and are left open to investigation and decision in the further progress of the cause."

The case was remanded with instructions to the court below to allow the respondents an opportunity to answer the bill. The respondents thereupon, on June 9, 1919, presented to the Supreme Court of the District of Columbia another motion to dismiss upon the following grounds (Rec., 33-87):

1. Lack of authority of counsel to represent the petitioner.
2. That petitioner had no capacity to sue.
3. That there is not such a thing as Pueblo of San Rosa.
4. The lands were ceded to the United States under the Gadsden Treaty.
5. That the bill seeks to control the discretionary powers of respondents.

The respondents also filed, on June 9, 1919, their answer to the merits and, besides denying the allegations of the bill of complaint, offered as defenses (Rec., 22-33):

1. That the Government has spent money constructing wells, buildings, a hospital and fences, and that all the inhabitants of the region upon which petitioners live are under the control and supervision of the Papago U. S. Indian Agency located at Sells, Arizona.

2. That the inhabitants of petitioner never had title to the lands involved under the laws of Spain or Mexico, except the ordinary Indian right of occupancy.

3. That an Indian reservation has been created by executive order declaring the lands involved herein to be a part thereof.

4. That no grant emanating from the government of Spain or Mexico was ever made to any village or community of Papago Indians in the Santa Rosa region, or to any Papago Indians, or located or recorded in the archives of Mexico, as is provided in Article VI of the so-called Gadsden Treaty; that all of the lands in controversy herein, when acquired from Mexico, passed under the dominion of the United States as public lands of the United States; that no right, title, or interest exists, or ever existed, in any Papago Indian or community of Indians in or to any of the lands in controversy herein other than the ordinary Indian right of occupancy and possession, subject to the sovereign rights of the United States.

The cause was heard on final hearing by the trial court, the Supreme Court of the District of Columbia, as set forth in its decree, upon the pleadings, evidence, and exhibits, "and also upon the motion of the defendants [respondents], accompanied by exhibits and affidavits, filed herein June 9, 1919, to dismiss the bill of complaint" (Rec., 100), and thereupon the trial court entered its decree (Rec., 100) October 3, 1924, and by the first paragraph thereof the said motion to dismiss of the respondents, dated June 9, 1919, is overruled, and by the second paragraph thereof (Rec., 100) the bill of complaint of the petitioner (plaintiff) is finally dismissed, with costs against petitioner (Rec., 100). The respondents (defendants in trial court) took no appeal therefrom.

The petitioner appealed to the Court of Appeals from the second paragraph of said decree, dismissing its bill of complaint (Rec., 111).

The Court of Appeals of the District of Columbia in the course of its opinion (Rec., 428) held that the motion of June 9, 1919, of the respondents to dismiss the bill was "not only improperly injected into the present case, but it came too late," and decided the case on its merits (Rec., 428-430). The court decided that while the lands involved were the property of petitioner under the laws of Spain and Mexico (Rec., 429), yet nevertheless the court held that the concluding clause of Article VI of the Gadsden Treaty (Rec., 429) forbids relief by the courts (Rec., 430). The court further held that "the power lies alone in Congress to extend to these people protection similar to that

thrown around the Pueblos of New Mexico, who were more fortunate than plaintiff, merely in that they possessed a paper title from Mexico'' (Rec., 430). The decree dismissing the bill was affirmed (Rec., 430).

Reasons for Allowance of the Writ.

The Court of Appeals, in holding that the concluding clause of Article VI of the Gadsden Treaty forbids relief to petitioner by the Court and denying petitioner relief, has decided a Federal question of substance not heretofore determined by this Court. The decision of the Court of Appeals of the District of Columbia has construed a treaty between the United States and the Republic of Mexico in a manner adverse to petitioner's rights, which also involves the construction of a treaty not heretofore determined by this Court.

WHEREFORE your petitioner prays that the writ of this Honorable Court may be issued as petitioned herein.

HUDSON P. HIBBARD,
LOUIS KLEINDIENST,
W. C. REID,
Counsel for Petitioner.

LEVI H. DAVID,
Of Counsel.

SUPPORTING BRIEF.

The opinion of the court below, the Court of Appeals of the District of Columbia, is reported in 54 *Washington Law Reporter*, 242, and is also set forth in the Transcript of Record at pages 423-430.

I.

This Court Has Jurisdiction.

The specific claims advanced and relied upon as a basis for jurisdiction have been set out in full in the petition under the heading "Reasons for allowing the writ," to wit, that the holding of the Court of Appeals that the concluding clause of Article VI of the Gadsden Treaty forbids relief to the petitioner by the court, and denying that relief, the said Court of Appeals has decided a Federal question of substance not heretofore determined by this Court, and that the decision of the said Court of Appeals has construed a treaty between the United States and the Republic of Mexico in a manner adverse to the rights of petitioner, which decision also involves the construction of a treaty between the United States and a foreign power not heretofore determined by this Court.

II.

The Property Rights of Petitioner Were Not Acquired by "Grant," But Were Recognized By The Laws and Decrees of Spain, As Well As Having Been Established By Prescription.

It is contended by petitioner that the concluding clause of Article VI of the Gadsden Treaty (10 Stat. at L., p. 1031) does not in any sense affect it. Such Article applies to instances where a grant has been specifically made, evidenced by a paper title, and the requirement of Article VI was such that this paper title must have been recorded prior to September 25, 1853. Such Article could not have applied to a property right which, in its very nature, could not have been recorded. A prescriptive right is of such nature that there could be no paper title, and, therefore, no record in the archives of such right.

The Papago Indians never had a grant of land. They were never "reduced" and placed in villages, as was the custom of Spain, with scattered tribes. These people are not asking for a foot more land than they had and occupied at the date the first white man set foot in their country. They asked nothing of Spain, because they possessed these very lands long before Spain knew the New World existed, and Spain recognized their rights to these lands as superior to the right of itself. With such relation existing between the Pueblo Indians and Spain, "grants" of lands from Spain to the Pueblos of lands possessed and occupied

by them prior to the Spanish discovery would have been an anomaly. The Pueblos might have granted their lands to Spain, but certainly Spain could not have granted these lands to the Papago Indians. At best, it was a concession, and the word "concession" is used by the decrees found in the laws of the Indies quite frequently.

This subject should be approached by the Court from an entirely different angle which the Court would approach the matter of rights of Indians of the eastern States who happen to have fallen subject to a power which based its rights upon conquest. Spain's idea was to Christianize the people of the newly discovered land, and the Spanish Crown took its source of title from the Papal Bull "Noverint Universi" of May 4, 1493, which is as follows:

"Whereas, you intend diligently, and with special effort, to subject, assisted by the divine clemency, all the aforesaid islands and mainland, and you propose to submit their inhabitants and settlers to the Catholic faith (as befits Catholic kings and princes), according to the customs of the Kings, your ancestors of illustrious memory, we, therefore, desirous that such an end be pursued, and that the name of our Savior be known in those parts, exhort you, in the name of God, and by the sacred baptism, as far as you are bound by the apostolic mandates, and, by the clemency of our Lord Jesus Christ, we attentively request you to undertake and pursue, with due diligence and the zeal of the orthodox faith, as you wish and you ought, to induce the people of those is-

lands and lands to accept the Christian Religion, so that neither danger nor difficulties shall deter you from your firm hope and confidence that Almighty God will assist you to successfully carry through your purpose. And as you audaciously undertake such an important matter, we, of our own volition, with apostolic liberality, not because you or anybody, in your behalf, have made any instance or demand upon us, but merely as a gift, with full knowledge and the plenitude of the apostolic power, grant you all islands and mainlands which have been, or will be, in the future, discovered westward of a meridian drawn and based on a line from the North Pole, that is to say, from the Septentrion to the South Pole, that is to say, the meridian, whether they be mainlands or islands which have been or will be discovered, whether they are towards the Indies or towards any other part whatever. The said line shall be distant from any of the islands commonly called the Azores or the Cape Verde Islands, 100 leagues towards the west and south."

Pursuant to the above, one of the first expressions of the policy of Spain and its attitude towards the property rights of the natives of the New World is found in the will of the Catholic Queen Isabel. The clause concerning the instruction and treatment of the Indians contained in this will and found in the Laws of the Indies, Book 6, Title 10, Law 1, is as follows:

"When the islands, and mainland of the oceanic sea, already discovered and to be discovered, were granted to us by the Holy See, our

principal intention was, at the time we requested this of Pope Alexander Sixth of great memory, that he should make us the said concession that we might procure, induce and attract their peoples and convert them to our holy Catholic faith and send to the islands and mainlands, prelates, priests, clergy, and other learned and God-fearing persons to instruct the natives and dwellers there in the Catholic faith and teach and educate them in good customs, and to use in that regard due diligence, as is more fully set forth in the letters of said concession. I asked the King, my lord, very affectionately, and I charge and order the Princess, my daughter, and the Prince, her husband, that they shall do and fulfill this, and that this shall be their principal purpose, and that they shall use much diligence in that regard; and that they shall not consent or permit that the natives, Indians and dwellers of said islands and mainlands, conquered or to be conquered, shall receive any injury in their persons or *property*; but they shall order that these shall be well and justly treated, and if they have suffered any injury it should be remedied, and shall provide so that nothing enjoined upon or ordered by us in the apostolic letters of such concession shall be violated in any way.' And we, emulating her Catholic and pious zeal, order and direct the Viceroy, Presidents, Audiencias, Governors and Royal Justices, and we charge the Archbishops, Bishops and Ecclesiastical Prelates that they keep this clause in mind and keep its provisions by laws; that, in order to convert the natives, instruction in Christian and Catholic doctrine, and good treatment shall be given."

Concerning the prescriptive right and the time necessary to acquire by prescription, we quote an extract from the Novisima Recopilacion de las Leyes de España, Book 9, Title 8, Law 4, of Philip Second, 1566, as follows:

“Because certain persons in our kingdom have and possess certain cities, villas and places and civil and criminal jurisdictions without having any instrument of title from us, nor from the Kings, our ancestors, and there has been some doubt whether the above can be acquired against us and our crown by any lapse of time WE ORDER AND DIRECT that immemorial possession, being proved in accordance with, and as and under the conditions which the law of Toro requires, (which is Law 1, Title 17, Book 10) is sufficient to acquire against us and our successors any cities, villas and places, and civil and criminal jurisdictions whatever, or any part thereof, with the rights annexed and belonging to the Lordships and jurisdictions; provided that said time of said prescription shall not be interrupted nor taken by us or by our orders, or by any other persons in our name, whether naturally or civilly; as to the supreme civil or criminal jurisdiction which the Kings have by royal power and superiority, which is that of doing whatever the other judges fail to do, we declare that this latter cannot be gained or acquired by prescription by said time nor by any other time; and also that which the laws say ‘that the rights of the Kingdom cannot be gained by time’ must be understood in regard to the duties and tributes due to us.”

The attitude of the government of Spain toward the Indians and their property rights is also shown by the Laws of the Indies, Book 4, Title 12, Law 18, March 16, 1642, as follows:

“We order that the sale, cultivation and adjustment of lands shall be made with such precaution that to the Indians shall be left, with the utmost liberality, all the lands in which may belong to them, not only as individuals, but also as communities, and the waters and streams in the lands which may have been made aqueducts, or any other improvements by which the lands have been fertilized by their personal industry; these shall be reserved in the first place, and in no case shall they be sold or alienated; and the Judges which may be sent shall satisfy the Indians which are found upon the lands and shall leave the lands to each one of the old tributaries, reservados and Indian headmen, governors, absent ones and communities.”

And in Book 4, Title 12, Law 14, Philip Second, November 20, 1578:

“Because we have wholly succeeded to the Lordship of the Indies, and because the public lands not granted away by the Kings, our predecessors, or by us, belong to our patrimony and royal crown, it is suitable that all the land which is held in possession without just and true title shall be restored to us, as it belongs to us, so that, reserving before everything that which to us, or our Viceroy, Courts, or Governors, may appear necessary for the plazas, commons valdios, pastures and territory of the inhabited

villages and towns, in view of their present condition, as well as of the future, and their possible expansion, and granting to the Indians that of which they may reasonably have need for working the land and making their crops and raising cattle, confirming them in that which they now have, and giving to them, in addition, that which is necessary, all the rest of the lands may remain and be free and unincumbered, to be disposed of according to our will. Wherefore we order and direct the Viceroys and Presidents of the pretorial courts that when it appears proper to them, they shall announce a suitable limit of time in order that those in possession may exhibit before them and the officers of their courts, which may name the titles of the lands, plantations, farms, stock farms, protecting those who are in possession with good title and guarantees or with just prescription, and they shall return and restore to us the remaining land to be disposed of according to our will."

And in Book 4, Title 12, Law 9, June 11, 1594:

"We order that the farms and lands which may be given to Spaniards shall be without prejudice to the Indians, and that those given to their prejudice and injury shall be returned to those to whom they may, in right, belong."

And in Book 4, Title 12, Law 12, March 24 and May 2, 1550:

"Because the farms of cattle, mares, hogs and other large and small cattle do great damage in the cornfields of the Indians, and espe-

cially the cattle which go at a distance and without guard; we order that no stock farms shall be granted in sections and places where injury can result, and where injury cannot be avoided, that they shall be far from the pueblos of Indians and their plantations, because for cattle there are distant lands and grass where they may be pastured and grazed without injury, and the justices shall cause the owners of cattle and those interested in the public welfare shall place whatever herdsmen and guards as may be sufficient to avoid damage, and in case that any happens, they shall make satisfaction for it."

And in Book XI, Title 8, Law 4, 1566, *Novísima Recopilacion de las Leyes de Espana*, it is said that immemorial possession properly proved under the conditions of Book 10, Title 17, Law 1, "is sufficient to acquire against us and our successors any cities, villas and places and civil and criminal jurisdictions whatever, or any part thereof, with the rights annexed and belonging to the Lordship and jurisdiction," but excepts duties and tributes from being acquired by prescription, thus showing that, except as to duties and tributes, the law of prescription was early recognized.

And Book 4, Title 12, Law 19, 1594, wherein it is directed that land given to Spaniards shall be given without prejudice to the Indians; that those given to their prejudice or injury shall be returned to those to whom they belong.

From the above Laws of the Indies, it is clearly shown: (1) That towns and villages could take and hold real property as Indies, and (2) that whatever lands the Indians then had were confirmed to them, and (3) that the King made it mandatory on the officials to grant to the Indians whatever more they might need from public lands; and (4) show that the Indians' lands were respected, and that even the governmental grant to Spaniards of Indian land was void.

We also submit that when lands of the Indians are mentioned, it means Indian communities, because the usual Indian lands and tenures were by communities.

III.

The Right Of The Indians To Their Lands Without Written Titles Was Recognized In Mexico As Well As In Spain.

Pallares Legislacion Federal Complementaria del Derecho Civil Mexicano (Mexico, 1897), conceded by the Government to be a book of authority so far as Pallares Commentary is concerned, says, at pages 26 and 27 of the commentary:

"It has been believed by companies marking out land that the possession of the Indians needed concrete written titles derived from the Crown to justify rights thereto; but the truth is that these pueblos had older and more sacred titles. Long before the contest, the Indios existed, possessing in common the lands which they cultivated, returning to their monarch cer-

cially the cattle which go at a distance and without guard; we order that no stock farms shall be granted in sections and places where injury can result, and where injury cannot be avoided, that they shall be far from the pueblos of Indians and their plantations, because for cattle there are distant lands and grass where they may be pastured and grazed without injury, and the justices shall cause the owners of cattle and those interested in the public welfare shall place whatever herdsmen and guards as may be sufficient to avoid damage, and in case that any happens, they shall make satisfaction for it."

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tain services and dues. This property increased so that everything which was conceded to the pueblos, according to the Laws of the Indies, whether founded theretofore or reduced, was confirmed by everything which existed in the Code so many times cited. And for this reason a famous juriconsult, to whom I owe especial recognition for scientific assistance, Lic. Prisciliano Diaz Gonzales, stated in a learned work published in 'El Nacional' on November 17, 1885, the following:

“ ‘From that time on there was private property for the Indians. No formal titles were issued to them; the Judge—Commissary looked over the lands, and if they were possessed by Indians, which he determined by verbal evidence, and summarily, he left as their property; the fact being noted in the report which the Commissary made to the government. This appears in Law 18, Title 12 of the R. de Indies, and we can be sure of the practical observance of the law by the instruction of the Viceroy of Peru, Juan Garcia de Mendoza, which Escalona, inserted in his ‘Gazofflacio’ Book 2, Part 2-A, Chapter 18, pages 212 and 213, and by the provisions in Article II of the Royal Cedula of October 15, 1774. Since the Indians had no titles nor any evidence of their property, other than possession verbally recognized by the Commissaries, they could not demand a title issued by the Spanish authorities.’ ”

The Supreme Court of the United States has examined the Laws of the Indies in the case of *Carino v. Insular Government*, 212 U. S., 449, and on page 461 of the opinion is found the statement of this Court:

“Prescription is mentioned again in the royal cedula of October 15, 1774, cited in 3 Philippine, 546: ‘Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription.’ It may be that this means possession from before 1700, but at all events the principle is admitted. As prescription, even against crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty.”

The comment by Mr. Justice Holmes, who wrote the opinion in this case, upon the rights of people who were, with their property, transferred to a new sovereignty and who were of that class that were not strong enough to assert technical rights, would be applicable in the instant case, from which opinion we quote as follows (p. 459):

“It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that ‘No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.’ Sec. 5, in the light of the declaration that we have quoted from it is hard to believe that the United States was

ready to declare in the next breath that 'any person' did not embrace the inhabitants of Benguet, or that it meant by 'property' only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public lands what they, by native custom and by long association, one of the profoundest factors in human thought, regarded as their own. * * *

(P. 460) "Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this if there is doubt or ambiguity in the Spanish law we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one 'for the benefit of the inhabitants thereof.'"

Prescription is mentioned again in the Royal Cedula of October 15, 1754, 3 Phil. Rep., 546:

“Where possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession as a valid title by prescription.”

However, the Court of Appeals in this very case was entirely satisfied that petitioner had good and valid title under both the laws of Spain and of Mexico when part of the United States. From this opinion we quote (Rec., 428-9):

“Coming to the case on its merits, the word ‘pueblo,’ as derived from its Spanish origin, is not enveloped in mystery nor is it used or applied in any technical sense. It broadly means a small settlement or gathering of people, and applies equally, whether the settlement be a small collection of Spaniards or Indians. It was created as a result of communal occupation of land for a common purpose, originally occupied by the people through their own volition. A Pueblo could thus be formed without any grant or charter. It means merely a settlement with a steady community. A Pueblo is defined in the Partidas, Law 1, Book 2, Law 5, as follows: ‘A pueblo is the name given to a community of people of every kind of the country where they are gathered together; and if for 10 or 20 years they have badly done anything by way of custom, the laws of the land knowing it, and not objecting, and approving, the pueblo, whatever it is, or the greater part of it, can do that thing, and it must be held and protected by custom.’

"The title of the Indian inhabitants of the pueblo in Mexico has been recognized not only by the Mexican but the Spanish laws, and such recognition rests not necessarily upon title by grant or charter from the Crown, but it may be established and was frequently by prescription. Prescriptive right, as against the Crown, existed and was recognized by the Spanish laws. In *Carino v. Insular Government*, 212 U. S., 449, the court, considering the legality of titles established by prescription against the Spanish Government in the Philippine Islands, said: 'Prescription is mentioned again in the Royal Cedula of October 15, 1754, cited in 3 Phil., 546: Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription. It may be that this means possession from before 1700, but in all events the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines, in regard to lands over which Spain had only a paper sovereignty.'

"There can be no question, we think, that prior to the cession under the Gadsden Treaty, the Papago Indians had acquired a title which was subject to recognition by the Government of Mexico."

IV.

**Property Rights Of Petitioner Under Gadsden Treaty
And The Treaty Of Guadalupe Hidalgo.**

The property rights of petitioner are to be decided by the treaty known as the Gadsden Treaty (10 Stat. at L., p. 1031), and by the Treaty of Guadalupe Hidalgo (9 Stat. at L., p. 922), as, under the Gadsden Purchase Treaty, all the provisions of the 8th and 9th articles of the Treaty of Guadalupe Hidalgo were to apply to the territory ceded by the Mexican government to the United States (Art. V, 10 Stat. at L., p. 1035). The Court of Appeals has assumed, and properly so, that the provision of said Article IX to the effect that Mexicans of such territory who shall not have preserved the character of citizens of Mexico shall be incorporated into the Union of the United States, with "the enjoyment of all rights of the citizens of the United States, according to the principles of the Constitution," applied to them for the one year's time given for them to elect whether they should remain the citizens of Mexico or become citizens of the United States. The Court of Appeals did not discuss what the rights of these people under the Constitution of the United States might be after the period of one year. We believe that the concluding paragraph of Article VIII, 9 Stat., 922, was intended to apply to the people who became citizens of the United States forever. That paragraph is as follows:

“In the said territories, property of every kind now belonging to Mexicans not established there shall be inviolably respected, the present owners, the heirs of these and all Mexicans who may after acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.”

If, however, the last-quoted paragraph was not written especially to protect such people in the enjoyment of their property forever, then there is nothing in either of the treaties above referred to on that subject, and we must look to the law of nations for a rule governing their rights.

This Court has very clearly and forcibly decided what their rights would be under the law of nations, and has applied that to the very article under discussion, Article IX of the Treaty of Guadalupe Hidalgo.

In the case of *Newhall v. Sanger*, 92 U. S., 761, we quote from page 763:

“The rights to private property, so far from having been impaired by the change of sovereignty and jurisdiction, were fully secured by the law of nations, as well as by treaty stipulations.”

We might observe, in passing, that it was to such grants as were mentioned in the *Newhall* case, and those referred to by the language of Mr. Justice Davis, who wrote the opinion, that would not be recognized unless they had been recorded prior to September 25, 1853; and we submit that it was not the intention of

the provision of Article VI of the Gadsden Treaty to deny property rights that did not have a basis for title in a paper grant.

Early in the jurisprudence of the United States Mr. Chief Justice Marshall interpreted for this country the rule of the law of nations that would pertain to this case in the following language (bottom star, p. 86):

“It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace his sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign.” *U. S. v. Percheman*, 7 Pet., 51.

The Supreme Court, in the case of *Leitensdorfer & Houghton v. Webb*, 20 How., 176, said:

“Upon the acquisition, in the year 1846, by the arms of the United States, of the Territory of New Mexico, the civil government of this Territory having been overthrown, the officer, General Kearney, holding possession for the United States in virtue of the power of conquest and occupancy, and in obedience to the duty of maintaining the security of the inhabitants in their persons and property, ordained, under the sanction and authority of the United States, a provisional or temporary government for the acquired country. By this substitution of a new supremacy, although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the government of their former allegiance, or those arising from contract or usage, remained in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and laws of the United States, or with any regulations which the conquering and occupying authority should ordain. Amongst the consequences which would be necessarily incident to the change of sovereignty, would be the appointment or control of the agents by whom and the modes in which the government of the occupant should be administered—this result being indispensable, in order to secure those objects for which such a government is usually established.

“This is the principle of the law of nations, as expounded by the highest authorities. In the case of *The Fama* in the 5th of Robinson’s Report, page 106, Sir William Scott declares it to be ‘the settled principle of the law of nations, that the inhabitants of a conquered territory change their allegiance, and their relation to

their former sovereign is dissolved; but their relations to each other, and their rights of property not taken from them by the orders of the conqueror, remain undisturbed.' So, too, it is laid down by Vattel, book 3d, Chapter 13, Section 200, that 'the conqueror lays his hands on the possessions of the State, whilst private persons are permitted to retain theirs; they suffer but indirectly by the war, and to them the result is, that they only change masters.' "

See also the case of *U. S. v. Lucero*, 1 N. M., 422.

Chancellor Kent declares that treaties

"are to receive a fair and liberal interpretation according to the intention of the contracting parties, and to be kept with the utmost scrupulous good faith. Their meaning is to be ascertained by the same rules of construction and force of reasoning which apply to the interpretation of private contracts." 1 Kent's Commentaries, 174.

And the court will put a liberal construction upon treaties so as to protect the rights of property:

"Where two constructions may be placed upon a treaty, one restrictive as to the rights that may be claimed under it, and the other liberal, the liberal construction will be preferred." *Hauenstein v. Lynham*, 100 U. S., 483.

The concluding paragraph of the opinion of the Court of Appeals in this case is (Rec., 430):

"The power lies alone in Congress to extend to these people protection similar to that thrown

around the pueblos of New Mexico, who are more fortunate than plaintiff, merely in that they possessed a paper title from Mexico."

We submit that, until Congress does extend to these people the protection they are entitled to under the treaties, it is for the courts to do so.

Congress has confirmed the titles of the Pueblos in New Mexico because paper titles were presented (notwithstanding it is now acknowledged by all persons familiar with the situation that the paper titles presented by Pueblo Indians were rank forgeries, and that neither Spain nor Mexico gave paper titles to the Indians, except possibly in some cases, to additional lands). In the instant case no political question is involved. It is purely a legal question as to what petitioner's rights were under the laws of Spain and Mexico, and the protection by the courts of those rights until Congress shall act in the matter. The laws of Spain and Mexico as to petitioner's rights have been presented in this brief, but the Court will take judicial notice thereof. *U. S. v. Perot*, 98 U. S., 428; *Fremont v. U. S.*, 17 How., 542.

When a treaty can be executed without legislation, the courts will enforce its provisions. *Foster v. Neilson*, 2 Pet., 314; *U. S. v. Arredondo*, 6 Pet., 735. Perhaps this Court might not provide a decree in this case that would result in giving petitioner a paper title. That is not asked in this case. It is asked that petitioner's rights to their property, as recognized by Spain and Mexico, be protected pending action by Congress.

Congress has, to some extent, acted in this matter. By Act of July 22, 1854 (10 U. S. Stat., 308), which, as the Court will see, was subsequent to the Gadsden Purchase, Congress provided, among other things, for a Surveyor General for what was then the Territory of New Mexico, which included the lands involved in this case, and provided that such Surveyor General should receive his instructions from the Secretary of the Interior as to ascertaining the rights of people to property acquired both under the Treaty of Guadalupe Hidalgo and the Gadsden Treaty.

The Secretary of the Interior, through the Commissioner of the General Land Office, by letter dated August 21, 1854, gave explicit instructions as to the procedure of such Surveyor General. This letter throws a flood of light upon the contemporaneous interpretation which the Secretary of the Interior gave to such act of Congress and to such treaties. While this Court will take judicial notice thereof, we have appended the entire letter hereto as an appendix (the italics appearing therein are ours). We doubt if this letter has ever been called to this Court's attention, and, while much of it does not pertain to the Pueblo Indians, we think the Court will find the letter interesting.

Pursuant to said letter, the Surveyor General did come into the then Territory of New Mexico and follow the instructions contained in the letter. He made several reports to Congress, upon which reports titles were either confirmed, rejected, or in some instances not acted upon at all. In his report of August 29, 1861, found in printed documents of 37th Congress,

1861-1862, Ser. 1117, pages 578-582, he reported upon plaintiff, Santa Rosa Pueblo, as follows (Trans. Rec., 435):

"The 8th section of the Act of Congress of 1854, organizing this office, requires the Surveyor General to 'make a report in regard to all the pueblos existing in the Territory, showing the extent and locality of each, stating the number of the inhabitants in the said pueblos, respectively, and the nature of their titles to their lands.' In accordance with this requirement, I append a tabular statement, embodying, as fully as they could be collected, these statistics of the pueblos, which I believe have not heretofore been collected and reported, as required by the law. The statement embraces, I believe, all the pueblos, whether in New Mexico proper or in Arizona. In alluding to the Pueblo Indians, I take occasion to remark that there is considerable complaint among them growing out of intrusions upon their lands by the white citizens of the country.

"In suggesting the necessity of some legal provision for the protection of the rights of these simple-minded but virtuous and faithful people, the Pueblo Indians, I need only, in support of the recommendation, make the following extract from a letter on file in this office from one of the former Pueblo agents: 'The Mexican people have in many instances set up claims to lands clearly within their (the Pueblos') limits—in some instances almost in the center of the pueblos. The consequence is that much ill feeling exists among them. * * * There are others of the Pueblos in the same situation; they complain bitterly of the encroachments of Mexicans upon them.' "

The tabular statement above referred to alludes to Santa Rosa as follows:

“No. 46, Santa Rosa, Papago Pueblo, Arizona, with the following remarks:

“The Papagos inhabit the country between Tucson and the Colorado of the west and between the Gila and the International Boundary line, and are similar in nearly all respects to the Pimas, speaking the same dialect, etc. See Record, page —.”

Congress has never acted further pursuant to this, or any other report that may have been made as to the Papagos. The Court will further observe that the act (Sec. 8, 10 U. S. Stat., 308), especially enjoins any disposition of these lands by Government officials until Congress has further acted. This suit is to enjoin Government officials from acting contrary to the statute, and from disposing of plaintiff's lands, or from administering them as Government lands in any way. We submit that, under the treaty, the property rights of petitioner may not be destroyed by failure of Congress to act, but that the courts may, and should, protect petitioner's rights.

Should Congress act in this matter, it would not be a grant of land to petitioner, but merely a confirmation of the titles held under the laws of Spain and Mexico. *Langdean v. Hanes*, 21 Wall., 521.

Therefore, it is respectfully submitted that the writ of certiorari should be issued as is prayed for in this cause, to the end that the decree of the Court of Ap-

peals of the District of Columbia may be reviewed and reversed by this Honorable Court, with costs against the respondents.

Respectfully submitted,

HUDSON P. HIBBARD,
LOUIS KLEINDIENST,
W. C. REID,

Counsel for Petitioner.

LEVI H. DAVID,
Of Counsel.

APPENDIX.

GENERAL LAND OFFICE.

AUG. 21, 1854.

William Pelham, Esq.,
U. S. Surveyor General of New Mexico.

SIR:

The 8th section of the act, approved 22d July, for the establishment of the office of Surveyor General in New Mexico, declares as follows:

“SECTION 8. *And be it further enacted*, that it shall be the duty of the Surveyor General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico: And for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the Treaty of Guadalupe Hildalgo of 1848, denoting the various grades of title, which his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their title to the lands. Such report to be made according to the form which may be prescribed by the Sec-

retary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants and give full effect to the treaty of 1848 between the United States and Mexico; and, until the final action of Congress on such claims, all lands shall be reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act."

The duty which this enactment devolves upon the Surveyor General is highly important and responsible. He has it in charge to prepare a faithful report of all the land titles in New Mexico which had their origin before the United States succeeded to the sovereignty of the country, and the law contemplates such a report as will enable Congress to make a just and proper discrimination between such as are *bona fide* and should be confirmed and such as are fraudulent or otherwise destitute of merit and ought to be rejected.

The treaty of 1848 between the United States and Mexico (U. S. Stat. at L., v. 9, p. 922), expressly stipulates in the 8th and 9th articles for the security and protection of private property. The terms there employed in this respect are the same in substance as those used in the treaty of 1803 by which the French Republic ceded the ancient Province of Louisiana to the United States, and consequently in the examination of foreign titles in New Mexico you will have the aid of the enlightened decisions and the principles therein developed of the Supreme Court of the United States upon the titles that were based upon the Treaty of Cessions and the laws of Congress upon the subject.

The security to private property for which the Treaty of Guadalupe Hidalgo stipulates is in accord-

ance with the principles of public law as universally acknowledged by civilized nations.

“The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.” U. S. *v.* Percheman, 7 Pet. Rep., 51.

In the case of U. S. *v.* Arredondo *et al.*, 6 Pet. Rep., 691, the Supreme Court declares that Congress “have adopted, as the basis of all their acts, the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant, and by which it is to be tested whether it was property at the time the treaties took effect.”

Upon the same basis, Congress has proceeded in the present act of legislation which requires the Surveyor General, under instructions from the Secretary of the Interior, to ascertain the origin, nature, character and extent of all claims to lands “under the laws, usages and customs of Spain and Mexico,” and arm the Surveyor General with power for the purpose by authorizing him to issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises.”

The private-land titles in New Mexico are derived from the authorities of Old Spain, as well as of Mexico.

Among the “necessary acts” contemplated by the law and required of you, is that you shall:

1. Acquaint yourself with the land system of Spain as applied to her ultramarine possessions, the general features of which are found, modified, of course, by local requirements and usages in the former provinces and dependencies of that monarchy on this continent.

For this purpose you must examine the laws of Spain, the Royal ordinances, Decrees and Regulations

as collected in White's Recompilacion, two volumes. By the acts of Congress approved 26th of May, 1824, 23d May, 1828, and 17th June, 1844 (U. S. Stat. at L., vol. 4, p. 52, ch. 173, p. 284, ch. 70, and vol. 5, p. 676, ch. 95), United States district courts were open for the examination and adjudication of foreign titles. Numerous cases on appeal under these laws, and other cases on writs of error in which actions in ejectment in the courts below had been instituted were brought before the Supreme Court of the United States where the rights of property under inceptive and imperfect titles which originated under the Spanish system have been thoroughly examined and discussed with eminent ability.

For these decisions I refer you to Peters' and Howard's Reports of the Decisions of the Supreme Court of the United States. It is important you should carefully examine them in connection with the Spanish law and the legislation of Congress on the subject, in order that you may understand and be able to apply the principles of the Spanish system as understood and expounded by the authorities of our Government.

Upon your arrival at Santa Fe you will make application to the Governor of the Territory for such of the archives as relate to grants of land by the former authorities of the country.

You will see that they are kept in a place of security from fire or other accidents, and that access is allowed only to land owners who may find it necessary to refer to their title records, and such references must be made under your eye or that of a sworn employee of the Government.

You will proceed at once to arrange and classify the papers in the order of date, and have them properly and substantially bound. You will then have schedules (marked 1), of them made and in duplicate, and will

prepare abstracts, #2, also in duplicate, of all the grants found in the records, showing the names of grantees, dates, area, locality, by whom conceded and under what authority.

You will prepare in duplicate, from the archives or other authoritative sources, a document, #3, exhibiting the names of all the officers of the Territory who held the power of distributing lands from the earliest settlement of the Territory until the change of government, indicating the several periods of their incumbency, the nature and extent of their powers concerning lands, whether and to what extent and under what conditions and limitations, authority existed in the governor, political chiefs, to distribute (*repartie*) the public domain, whether in any class of cases they had the power to make an absolute grant, and, if so, for what maximum in area, or whether subject to the affirmation of the departmental or supreme government, whether the Spanish surveying system was in operation, and since what period in the country and under what organization, also with verified copies in the original and translations of the laws and decrees of the Mexican Republic and regulations which may have been adopted by the general government of that republic for the disposal of the public lands in New Mexico. Herewith you will receive a table of land measures adopted by the Mexican Government, translated from the "*Ordenanzas de Tierras y Aguas*" by Mariano Galvan—edition of 1844, as printed in Ex. Doc. #17, First Session, 31st Congress, House of Representatives, containing much valuable information on the subject of California and New Mexico and of which document I would invite your special and careful examination.

In a report of the 14th November, 1851, from the Surveyor General of California, it is stated that all the

grants, etc., of lots or lands in California made either by the Spanish Government or that of Mexico refer to the "vara" of Mexico as a measure of length; that, by common consent in California, that measure is considered as exactly equivalent to 33 American inches; that officer then enclosed to us copy of a document he had obtained as being an extract of a treaty made by the Mexican Government, from which it would seem that another length is given to the "vara," and by J. H. Alexander's (of Baltimore) Dictionary of Weights and Measures, the Mexican vara is stated to be equal to .92741 of the American yard.

This office, however, has sanctioned the recognition in California of the Mexican vara as being equivalent to 33 American inches.

You will carefully compare the data furnished in the table herewith and in the foregoing with the Spanish measurements in use in New Mexico and will report whether they are identical, or, if varied in any respect by law or usage, you will make a report of all the particulars. You should also add to "Document #3" the *forms* used under the former governments to obtain grants, beginning with the initiatory proceeding, namely, the petition, and indicating the several successive acts until the title was completed. A copy of the "schedule," "abstract" and "documents" required of you in the foregoing, duly authenticated by you, should constitute a part of the permanent files of the Surveyor General's office, and duplicates of them should be sent, as soon as practicable, to the Department of the Interior.

The knowledge and experience you will acquire in arranging the archives, collecting materials and making out the documents called for by these instructions will enable you to enter understandingly upon the work of receiving and examining the testimony which may

be presented to you by land claimants and prepare your reports thereon for the action of Congress.

In the first instance, you will provide yourself with a journal consisting of substantially-bound volume or volumes, which is to constitute a complete record of your official proceedings in regard to land titles, and with a suitable docket for the entry therein of claims in the order of their presentation, and so arranged as to indicate, at a glance, a brief statement of each case, its number, name of original and present claimant, area, locality—from what authority derived, nature of title, whether complete or incomplete, and your decision thereon.

Your first session should be held at Santa Fe, and your subsequent sessions at such places and periods as public convenience may suggest, of which you will give timely notice to the Department.

You will commence your session by giving proper public notice of the same in a newspaper of the largest circulation in the English and Spanish languages, will make known your readiness to receive notices and testimony in support of the land claims of individuals derived before the change of government. You will require claimants in every case, and give public notice to that effect, to file a written notice setting forth the name of the "present claimant," name of the "original claimant," nature of claim, whether inchoate or perfect, its date, from what authorities the original title was derived, with a reference to the evidence of the power and authority under which the granting officer may have acted, quantity claimed, locality, notice and extent of conflicting claims, if any, with a reference to the documentary evidence and testimony relied upon to establish the claim and to show a transfer of right from the "original grantee" to "present claimant."

You will also require of every claimant an authenti-

cated plat of survey, if a survey has been executed, or other evidence, showing the precise locality and extent of the tract claimed. This is indispensable in order to avoid any doubt hereafter in reserving from sale, as contemplated by law, the particular tract or parcel of land for which a claim may be duly filed, or in consummating the title to the same hereafter in the event of a final confirmation.

The effect of this will be not only to save claimants from embarrassments and difficulties inseparable from the presentation and adjudication of claims with indefinite limits, but will promote the welfare of the country generally by furnishing the Surveyor General with evidence of what is claimed as private property under treaty and the Act of 22nd of July, 1854, thus enabling him to ascertain what is undisputed public land and to proceed with the public surveys accordingly without awaiting the final action of Congress upon the subject.

You will take care to guard the public against fraudulent or antedated claims and will bring the title papers to the test of the genuine signatures which you should collect of the granting officers, as well as to the tests of the official registers or abstracts which may exist of the title issued by the granting officers.

In all cases, of course, the original title papers are to be produced, or loss accounted for, and where copies are presented, they must be authenticated, and your report should also state the precise character of the papers acted upon by you, whether original or otherwise. Where the claims may be presented by a party as "present claimant" in right of another, you must be satisfied that the deraignment of title is complete, otherwise the entry and your decision should be in favor of the "legal representative" of the original grantee.

Your journal should be prefaced by a record of the law under which you are required to act and of your commission and oath of office, and should contain a full record of the notice and evidence in support of each claim and of your decision, setting forth as succinctly and concisely as possible all the leading facts, particulars and the principles applicable to the case, and upon which such decision may be founded. All the original papers should, of course, be carefully numbered, filed and preserved, and upon each should be endorsed the volume page of the record in which they are entered, and such reference should be made on the journal and docket as will properly connect them with each other.

Your docket should be a condensed exhibit of every case and your decisions. The claims, both as to grade and dignity, may be classified by numerals or alphabetically, accompanied by explanatory notes—in such a manner that it will show every case confirmed, and every one rejected by you.

In the case of any town lot, farm lot or pasture lot held under a grant from any corporation or town to which lands may be granted for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof, or in the case of any city, town or village lots, which city, town or village existed at the time possession was taken of New Mexico by the authorities of the United States, the claim to the same may be presented by the corporate authorities, or where the land on which the said city, town or village was originally granted to an individual, the claim may be presented by or in the name of such individual, *and the fact being proved to you of the existence of such city, town or village at the period when the U. S. took possession may be considered by you as prima facie evidence of grant to such corporation or to the*

individuals under whom the lot holders claim, and where any city, town or village shall be in existence at the passage of the Act of 22d of July, 1854, the claim for the land embraced within the limits of the same may be made and proved up before you by the corporate authorities of the said city, town or village. Such is the principle sanctioned by the Act of 3d of March, 1851, for the adjudication of Spanish and Mexican claims in California, and I think its application to and adoption proper in regard to claims in New Mexico.

In the month of March, 1849, there was published in the Atlantic States an extract of a letter dated December 12th, 1848, at Santa Fe (New Mexico), purporting to be from a young officer of the Army, in which it was stated that "the prefect at El Paso del Norte has, for the last few months, been very active in disposing (for his own benefit) of all lands in that vicinity that are valuable, antedating the title to said purchasers;" that "these land titles" would "be made a source of profitable litigation," etc. It will be your duty to subject all papers under suspicion of fraud to the severest scrutiny and test in order to settle the question of their genuineness.

You will also collect information from authentic sources in reference to the laws of the country respecting minerals and ascertain what conditions were attached to grants embracing mines, whether or not the laws and policies of the former governments conferred absolute title in granting lands of this class in New Mexico.

It is proper, also, and you are instructed, in the case of every claim that may be filed, to ascertain from the parties, and require testimony as to whether the tracts claimed are mineral or agricultural, and you will be careful to make the necessary discrimination in the record of your proceedings and in your docket.

Your report should be divided into two parts.

Part first should embrace individual and municipal claims and should be prepared in the manner contemplated by law and in accordance with the requirements in the foregoing instructions.

The law further requires you also to "make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land."

Part second of your report should be devoted to this branch of your duty.

It will be your business to collect data from the records and other authentic sources relative to these pueblos so that you will enable Congress to understand the matter fully and legislate in such a manner as will do justice to all concerned.

In a report dated July 29, 1849, in camp near Santa Fe, from the Indian Agent, James S. Calhoun, to the Commissioner of Indian Affairs, he says: "The Pueblo Indians, it is believed, are entitled to the early and especial consideration of the Government of the United States. They are the only tribe in perfect amity with the Government, and are an industrious, agricultural and pastoral people living principally in villages ranging north and west of Taos, south on both sides of the Rio Grande more than 250 miles;" that "by a Mexican statute, these people," as he had been informed by Judge Houghton, of Santa Fe, "were constituted citizens of the Republic of Mexico, granting to all of mature age who could read and write, the privilege of voting, but this statute has no practical operation;" that since the occupancy of the territory by the Government of the United States the territorial Legislature of 1847 passed the following act, which, at the date of the Indian agent's report, was in force:

"Be it enacted by the General Assembly of the Territory of New Mexico:

"SECTION 1. That the inhabitants within the Territory of New Mexico, known by the name of Pueblo Indians and living in towns or villages built on lands granted to such Indians by the laws of Spain or Mexico, and conceding to such inhabitants certain land and privileges to be used for the common benefit, are severally hereby created and constituted bodies politic and corporate, and shall be known in law by the name of the 'Pueblo,' etc. (naming it), and by that name they and their successors shall have perpetual succession, sue and be sued."

In a subsequent report, namely, of the 4th October, 1849, the same officer, reported from Santa Fe that "The pueblos or civilized towns of Indians of the Territory of New Mexico are the following" [here follows a list of pueblos in New Mexico in 1849, but, as the lands in question were not a part of New Mexico until 1854, the Papagos were, of course, not included, so it is unnecessary to enumerate the New Mexico pueblos]. The above enumeration, it is stated by the officer mentioned, "was taken from census ordered by the Legislature of New Mexico convened December, 1847, which includes only those of five years of age and upwards," and, further, that "these pueblos" are located from 10 to near 100 miles apart, commencing north at Taos and running south to near El Paso some 400 miles or more, and running east and west 200 miles," this statement having no reference to pueblos west of Zunia.

In another despatch, dated the 15th of October, 1849, at Santa Fe, the same agent reports that "These pueblos are built with direct reference to defense, and their houses are from one to six stories high," etc.; that

"the general character of their houses is superior to those of Santa Fe;" they "have rich valleys to cultivate," etc., and they "are a valuable and available people and as firmly fixed in their homes as any one can be in the United States;" that "their lands are held by Spanish and Mexican grants, to what extent is unknown;" that Santa Ana, as Major Weightman had informed the agent, "decreed in 1843 that one born in Mexico was a Mexican citizen, and, as such, is a voter, and, therefore, all the pueblo Indians are voters;" but "that the exercise of this privilege was not known prior to what is termed an election, the last one in this Territory," etc.

It is obligatory on the Government of the United States to deal with the private-land titles and the "Pueblos" precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done. To go that far and no farther. This is the principle which you will bear in mind in acting upon these important concerns.

You will append to your report on the pueblos the best map of the country that can be procured on a large scale, and will indicate thereon the localities and extent of the several pueblos as illustrative of that report, which you are desired to prepare and transmit to the Department at as early a period as the nature of the duty will allow.

Very respectfully your ob't servant,
JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR.

AUGUST 25, 1854.

The foregoing instructions are hereby approved.

R. McCLELLAND,
Secretary.

(2129)

FILED
DEC 15 1926

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1926.

—
No. 511.
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~~THE~~ PUEBLO OF SANTA ROSA, *Petitioner,*
vs.
ALBERT B. FALL, Secretary of the Interior, and
WILLIAM SPRY, Commissioner of the General Land
Office, *Respondents.*

—
ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
THE DISTRICT OF COLUMBIA.

—
BRIEF FOR PETITIONER.
—

W. C. REID,
Of Albuquerque, N. Mex.,
LOUIS KLEINDIENST,
HUDSON P. HIBBARD,
Of Los Angeles, Calif.,
Attorneys for Petitioner.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 511.

THE PUEBLO OF SANTA ROSA, *Petitioner,*

vs.

ALBERT B. FALL, Secretary of the Interior, and
WILLIAM SPRY, Commissioner of the General Land
Office, *Respondents.*

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
THE DISTRICT OF COLUMBIA.

BRIEF FOR PETITIONER.

STATEMENT OF THE CASE.

On October 25, 1926, this Honorable Court granted
the application of the petitioner, The Pueblo of Santa

Rosa, for the writ of certiorari to review the final decree of the Court of Appeals of the District of Columbia (R. 431) which affirmed a decree (R. 100) of the Supreme Court of the District of Columbia, which dismissed the bill of complaint of the petitioner (Plaintiff), upon the merits with costs. (R. bottom p. 426, and pp. 427, 428-430)

The order of this Court allowing the writ of certiorari provides:

The petition for a writ of certiorari in this case is granted and the case set for hearing on January 10 next, after the cases heretofore assigned for that day on the issue as to the existence of authority of counsel who filed the bill to represent complainant.

On January 28, 1915, the petitioner here, appellant in the said Court of Appeals and the plaintiff in the court of first instance, to wit: the Supreme Court of the District of Columbia, filed its bill of complaint to restrain the Secretary of the Interior and the Commissioner of the General Land Office from opening the plaintiff's land for entry to settlers as part of the government domain under the laws of the United States. (R. 1-10)

On February 20, 1915, the defendants (respondents) filed a motion (R. 11-12) to dismiss, in the nature of a demurrer, which was sustained by the trial court and a final decree was entered April 25, 1916, dismissing the bill, with costs to the defendants (R. 22) on the ground set forth in the opinion (R. 12-21) of the trial court, viz., the incapacity of the corporate plaintiff to maintain the suit as alleged in the bill. (R. 21)

Thereupon, the petitioner (plaintiff) appealed to

the Court of Appeals, and on April 27, 1917, that Court having reversed the decree of the trial court, directed the trial court to enter a *final decree* in favor of petitioner (plaintiff) as prayed in the bill (Pueblo of Santa Rosa vs. Lane, 46 App. Cas. D. C. 411 (1917), 47 Washington Law Reporter, 374), for the reason that when the case was argued in the Court of Appeals,

"counsel for the defendants [respondents] in open court announced that a final decree might be entered in as much as the defendants [respondents] did not desire to answer or plead further in the case below. (Italics supplied) Accordingly, this court [the Court of Appeals] reversed the decree of the Supreme Court [of the District of Columbia] and remanded the cause 'with directions to enter a decree restraining defendants from offering for entry or sale as part of the public domain of the United States any of said lands under any land or mineral land law of the United States, and requiring, insofar as lies within the power of the Land Department, to prevent, in as large degree as possible, any further infringement upon the property rights of the plaintiff.'"

(Opinion, Court of Appeals, R. 425-6 (1926), reported in 54 Washington Law Reporter, 242, 243; 12 Fed. (2d) 332; not yet officially reported in reports of Court of Appeals.)

The foregoing voluntary oral announcement in open court of counsel for respondents (defendants) to the Court of Appeals does not appear in the first opinion of that Court reported in 46 App. Cas. D. C. 411 (1917) but it is set forth by the Court of Appeals in its opinion, on pages 425 and 426 of the present Transcript of Record.

The Court of Appeals, in its opinion, also says (R. 426) :

“The case was appealed by defendants [respondents] to the Supreme Court of the United States, and when it came on for hearing in that Court, the Solicitor General, on behalf of the defendant officers, *notwithstanding the oral stipulation made in this court, insisted upon the right of the defendants to answer in the Supreme Court of the District.*” (Italics supplied)

On the said appeal of the respondents (defendants) to the Supreme Court of the United States, this Court, while fully sustaining the decision of the Court of Appeals (in 46 App. Cas. D. C. 411) in holding that the plaintiff (petitioner here) is entitled to become a suitor for the purpose of enforcing or defending its property interests and that the decision of the Court of Appeals correctly held that the trial court committed error in sustaining defendants' (respondents') motion to dismiss the bill of complaint, the Supreme Court of the United States held that the Court of Appeals ought not to have directed the entry of a final decree awarding a permanent injunction against the defendants (respondents here); and further held that the defendants *were entitled to an opportunity to answer to the merits, just as if their motion to dismiss had been overruled in the court of first instance.* Accordingly, the decrees of the Court of Appeals and of the trial court were reversed, with directions to overrule the motion to dismiss, to afford defendants an opportunity *to answer the bill*, and to grant an order restraining the defendants from in anywise offering, listing, or disposing of any of the lands in question

pending the final decree, and to take such proceedings as may be appropriate and not inconsistent with said opinion. (Lane etc. vs. Pueblo of Santa Rosa, 249 U. S. 110, 114, argued January 29, 1919, decided March 3, 1919).

While the case was pending in the Supreme Court of the United States on said appeal by defendants (respondents), on January 9, 1919—twenty days prior to the oral argument in this Court—in response to a letter from the Solicitor General of the United States, dated January 3, 1919, inquiring by what authority this suit was instituted and maintained, counsel for the plaintiff wrote a letter to the Solicitor General advising him that their authority was conferred by the power of attorney and substitution under such power of attorney, copies of which were enclosed in said letter. (R. 36-40; see also R. 33-34)

After the decision of this Court (reported in 249 U. S. 110), and the remand of the case to the trial court, the defendants (respondents), on June 9, 1919, *filed their answer to the merits* (R. 22-33). On the same date, June 9, 1919, the defendants also filed a motion to dismiss this cause, after the case had been pending for over four years, on the ground, viz., “for lack of authority on the part of the attorneys of record of the alleged plaintiff to represent their alleged client or to maintain this suit.” (Rec. 33-87)

On April 21, 1921, the trial court entered an order postponing a decision on the above motion to dismiss (filed June 9, 1919) until the final hearing of the cause. (R. 89) A memorandum opinion of the trial court was filed. (Rec. 87-89)

The cause was heard on final hearing, upon the pleadings, evidence and exhibits, “*and also upon the motion*

of the defendants, accompanied by exhibits and affidavits filed herein June 9, 1919, to dismiss the bill of complaint" (R. 100), and final decree was entered October 3, 1924 (R. 100), the first paragraph of which overruled the said motion of defendants of June 9, 1919, to dismiss for lack of authority of counsel to file the bill. (R. 100) And the defendants (respondents) entered no appeal therefrom. (R. 100; Opinion, Court Appeals, R. bottom p. 426 and p. 427) That part of said decree is final. (Cole v. Cole, 49 App. Cas. D. C. 237 (238), s. c. 263 F. 633).

Petitioner (plaintiff) appealed from only that part of the decree which dismissed the bill on the merits, with costs; the notation of appeal advised the court that plaintiff was not appealing from paragraph 1 of the decree, and counsel for defendants endorsed "no objection" thereon. (R. 111)

The trial court filed an opinion "on merits and upon motion to dismiss." (R. 90-100.)

The substance of all of the testimony, and the exhibits set forth in the statement of the evidence, approved by consent of counsel, and settled and signed by the trial court, are contained in the Record at pages 114-422.

From only that part of the final decree dismissing the bill of complaint on the merits, plaintiff appealed to the Court of Appeals of the District of Columbia (Rec. 100, 111, 427) and filed assignment of errors. (Rec. 101-110.) See opinion Court of Appeals (R. bottom p. 426 and 427)

Notwithstanding the fact that the motion of June 9, 1919, of the defendants (respondents) to dismiss the case on the ground of the alleged lack of authority of counsel to file the bill, was overruled by the first

paragraph of the final decree (R. 100), and that no appeal was taken therefrom by defendants (respondents), said defendants as appellees in the Court of Appeals attempted to inject the subject-matter of their said motion into the case.

In disposing of the point, the Court of Appeals says (Rec. beginning bottom page 426 and continuing on page 427) :

"No appeal was taken by defendants from that portion of the decree overruling the motion, challenging the authority of counsel for plaintiff to represent their client. Plaintiff accordingly limited the present appeal to that portion of the decree dismissing the bill. (Italics supplied)

"When this case came on for final hearing in the court below, there was a dual trial. The right of counsel to appear for plaintiff was challenged by a motion to dismiss the bill; and the issue of plaintiff's right to a decree was raised by answer to the bill. The court combined the case on the motion to dismiss and on bill and answer and heard testimony thereon both as to the merits and in support of the motion. *The case was decided by denying the motion to dismiss and entering a decree for the defendants on the merits.* The opinion of the court below was confined to holding in effect that counsel for plaintiff have no authority to represent it. *It was error to hear the motion as a part of the case on its merits.* (Italics supplied) A motion challenging the right of counsel to appear for a litigant in no way affects the merits of the case. This question can be raised by a procedure well known to the practice; namely, upon a preliminary motion supported by affidavits setting forth the facts and asking for a rule requiring counsel to show cause why the objections to his appearance should not be sustained. It cannot be raised by answer, or by a motion to dismiss in eq-

uity, since a plea goes to the merits of the case, while the proceeding challenging the authority of an attorney to appear is between different parties and involves a preliminary matter collateral to the issue on the merits. It in no way affects the right of the party whose attorney is challenged, should the motion be sustained, to employ other and proper counsel to represent him in the further conduct of his case.

"The rule is well stated in the case of *Gage vs. Bell*, 124 Fed. 371, 379, as follows: 'Necessarily it is the practice in all courts to treat the attorney appearing for a litigant as duly authorized thereto by that litigant. The authority to appear must exist, to be sure, but it is conclusively presumed, or assumed, rather, by the court, unless it is formally, and by a special proceeding known to the practice, called in question. 3 Enc. L. (2d Ed.) 349; *Id.* 375. The defendant cannot, by answer or plea, set up want of authority in the plaintiff's attorney, but he must make a rule upon him to show his authority, supported by affidavit as to the facts. *Id.* 377, citing *Martin vs. Walker*, Abb. Adm., 579, Fed. Cas. No. 9170; *Howe vs. Anderson* (Ky. 1890) 14 S. W., 216; *Hill vs. Mendenhall*, 21 Wall 453, 22 L. Ed. 616. The reasons for this rule are well illustrated by this case. The courts could not conveniently do the business of litigation if either litigant could capriciously embody in his pleadings the collateral matter of the authority of the attorneys, respectively, to appear and file their pleadings. Every litigation would degenerate into a preliminary inquiry about the attorney's dealings with his client.' "

"Until the contrary is shown, counsel in a case will be presumed by the court to appear by proper authority, and this presumption cannot be removed by a collateral attack in the pleadings. It is a preliminary matter to be disposed of before proceeding to the merits of the case. *It was, therefore,*

not only improperly injected into the present case, but it came too late. (Italics supplied)

"Coming to the case on its merits, the word 'Pueblo', * * * (R. 428)

The Court of Appeals says (R. 429) that there can be no question that prior to the cession under the Gadsden Treaty, the Papago Indians had acquired a title which was subject to recognition by the Government of Mexico, but that no proceedings were ever instituted to have this title established or made a matter of record; hence, with the cession to the United States, the Indians came to us with no paper title; with nothing more than the prescriptive right which could have been exercised by them as recognized citizens of Mexico; and the Court holds (R. 429) that "this mere prescriptive right" is not protected by the terms of the treaty of Guadalupe Hidalgo, as to be enforceable in the courts; and the Court reaches the conclusion (R. 430) that "the concluding clause of article six of the Gadsden Treaty, under the evidence adduced below, forbids relief by the courts. The power lies alone in Congress to extend to these people protection similar to that thrown around the pueblos of New Mexico, who were more fortunate than plaintiff, merely in that they possessed a proper title from Mexico."

Thereupon, plaintiff filed its petition in this Court for the writ of certiorari. In opposition to its petition, respondents here and defendants below filed their brief wherein they prayed that the writ should not issue for the reason that the decree was proper on the ground that the attorneys of record for plaintiff had no authority to represent the plaintiff (petitioner).

The bill of complaint was filed on January 28, 1915. (R. 1) The defendants were served the same day (R.

10) and appeared in the action January 29, 1915 (R. 11) and on February 20, 1915, filed a motion to dismiss in the nature of a demurrer, under the local practice (R. 11-12) in which no mention was made of alleged lack of authority of counsel. Defendants below (respondents here) at all times recognized the attorneys for petitioner as attorneys of record and served copy of all pleadings upon them.

It is respectfully submitted that in view of all of the foregoing considerations, the alleged lack of authority of counsel who filed the bill to represent the complainant is not an open question.

In view, however, of the order of this Honorable Court, granting the writ of certiorari, the matters relating to the issue of such authority will now be more fully considered.

Petitioner, the Pueblo of Santa Rosa, gave to Robert F. Hunter, on December 8, 1880, a power of attorney to represent them with right of substitution and delegation. (R. 37) On May 31, 1911, Hunter substituted Alton M. Cates, Esquire, and retained him and other counsel on behalf of the Pueblo of Santa Rosa to institute this suit. The bill of complaint was filed by him and associate counsel and they thereafter associated other counsel in the case. The inhabitants and the chief of Santa Rosa had knowledge of the preparation and institution and prosecution of this suit at all times and approved of the action of counsel until April 20, 1918, when under the instructions of the agents of the defendants (respondents), they refused to discuss the suit with their attorneys. The respondents circulated a petition amongst certain of the inhabitants of Santa Rosa, which petitioned the trial court to dismiss this suit. (R. 407)

ASSIGNMENT OF ERRORS COMPLAINED OF
BY THE PETITIONER, PUEBLO OF SANTA
ROSA, RELIED UPON AS MATERIAL TO THE
ISSUE BEFORE THIS COURT, ARE:

Assignment of Error No. 53 and Assignment of Error No. 54 (R. 108-109) are as follows:

"53. The court erred in overruling plaintiff's objection to the question asked by defendants of their witness Frank A. Thackery, and in overruling plaintiff's motion to strike, hereinafter set forth (Record, typewritten pages 408-409).

Q. Did you take any steps to embody this desire of the present day inhabitants of that vicinity that the suit end and not go on, in written form?

Mr. Kleindienst: We object to this on the grounds that it is hearsay—not the best evidence. Let this objection precede the previous question and we move that the answer be stricken.

(Objection and motion overruled; exception noted.)

A. Yes, sir.

Q. Please state just what you did.

A. I had a petition prepared covering the matters stated, included a request for dismissal, and after having it carefully interpreted and explained to these people, they signed it.

Q. State whether any threat, or promise or pressure of any sort was offered or brought to bear upon them or any of them to induce them to sign this petition?

A. No, sir, there was none.

Q. Was the petition itself interpreted in the hearing of these Indians?

A. I don't understand Papago but it was given to the interpreter in each case and I know from his mentioning various words in English through the petition, that he had read it to all of them who

signed. It took a considerable length of time in each case, both preceding and following the reading of the petition. There was in almost every case quite an extended discussion and talk regarding it before they signed. (Petition produced.) The petition contained 181 or 182 signatures. The census of Achi, Akehin, Anegam and Kiacheemuck, which last-named village is marked on the census as Santa Rosa, shows a population of 195 males, over 21 years old. The petition contains a few women. I started out to let the adult women sign the petition also, and afterwards, to avoid making such a cumbersome document, I decided just to take the matter up with the adult men. The women, according to Papago custom, take no part in the councils or agreements or such matters. In addition to the Indians to sign at meetings, quite a few signed who were not asked by me. Where my name appears as a witness opposite a signature, all signed in my presence.

54. The court erred in admitting in evidence a petition known as Defendants' Exhibit 6, the signatures to which defendants' witness Frank A. Thackery, special supervisor in the Indian service of the Interior Department, testified he obtained, reciting that the signatories ask the court to dismiss this suit, to which plaintiff objected on the grounds that the document is a self-serving document of the defendants, and is incompetent, immaterial and irrelevant, and it appears to be a document without date and it is not the best evidence of what it purports to show, which objection was overruled and an exception noted (Record, typewritten page 409). Plaintiff also moved to strike the said petition as not competent as testimony or evidence in the case, as not upon any issue properly raised in the case, and upon the further ground that no opportunity has been given counsel for plaintiff to take up this matter with any of the signers or cross-examine them on it; motion denied; exception noted (R. 405).

SUMMARY OF ARGUMENT.

The lands of the petitioner, the Pueblo of Santa Rosa, were being encroached upon, and the record shows from direct evidence that, in the years 1855, 1856, 1863, 1874, 1876, it, and their chiefs in its behalf made efforts to stop the encroachments upon its land. (R. 164, 165, 166, 181, 185, 186, 193) In the year 1880, the Bishop of the Catholic Church introduced to the various chiefs one Robert F. Hunter, a lawyer, and Lius, Chief of Santa Rosa, together with the head chief of all the Papagos, Jose Maria Ochoa (referred to in the testimony as Con Quien) executed a power of attorney wherein said Hunter was made their attorney in fact with right of substitution and delegation. Hunter thereafter caused the employment of Alton M. Cates (the attorney who filed the original bill, in behalf of Santa Rosa), as attorney for the Pueblo of Santa Rosa; so the suit was lawfully commenced. Mr. Cates (before his death) under his substitution as attorney in fact for the Pueblo and by his being attorney of record in the case, associated other counsel as attorneys for the Pueblo.

In the argument to follow, respondents expect to show that the inhabitants and the Chief of Santa Rosa at all times during the preparation of the suit and during its prosecution up to 1918, had knowledge and approved of the action of counsel.

That the Indian Department and agents of the respondents ordered the inhabitants of Santa Rosa not to confer with their attorneys, and obtained from some individual Indians an *ex parte* petition requesting the trial court to dismiss this suit, while petitioner's counsel were in the field taking depositions of respondents' witnesses with respondents' attorneys. The respon-

dents' attorneys did not inform petitioner's attorney of the petition until five days later when the "deposition party" was more than one hundred miles from Santa Rosa at which time all the signers and Papago witnesses had gone to their respective houses. (Rec. 406-407) Attorneys for petitioner could not go back to confer with them for the reason that they were instructed by respondents' agents not to talk to the attorneys for petitioner. (Rec. 364-365-337-144-391)

If the pendency of an action is known to the inhabitants of a town and reported to the town at a meeting and no opposition or objection made, the opposing side can not raise the question of authority of counsel to defeat the suit. *The Town of Delhi vs. James H. Graham* 3 Hun. (N. Y.) 407.

Petitioner contends also that the authority of counsel is no part of the merits of a case and can not be raised by the opposing side as a defense to the suit after the merits of the case have been submitted to the court by motion to dismiss in the nature of a demurrer in which motion no question of authority was raised; and an appeal taken from the ruling on said motion to dismiss; and the case has gone through the courts to the Supreme Court of the United States before the question of authority of counsel was raised. In other words, the defendants sat by to see if they would win on the merits and having had the merits decided against them they endeavor to raise this question to defeat the suit, although they had knowledge of the source of petitioner's authority before, in 1885, and it was again furnished to them before the case was orally presented to the Supreme Court of the United States, January 29, 1919 (R. 334)

ARGUMENT.

THE REASON THE POWER OF ATTORNEY
WAS EXECUTED TO HUNTER BY LUIS ON BE-
HALF OF THE INHABITANTS OF SANTA ROSA.

As has been shown in the former decision of the case, the inhabitants have resided in Santa Rosa since the memory of man runneth not to the contrary.

The Gadsden Treaty took effect June 30, 1854 (R. 192) at which time sovereignty of the land in question was ceded to the United States. On June 29, 1855, Major Emory, boundary commissioner on the Mexican border in his report to Congress, for 1854 shows that the Indians, including those of San Xavier, were worried about the title to their lands and what effect the change in sovereignty would have upon their title. The chiefs and head chief travelled two hundred miles to confer with the boundary commissioner who advised them that the treaty protected them in whatever rights they had and that the government would, within a short time, cooperate with them. (R. 185-186) In 1856, the Secretary of the Interior reported to Congress that the Pueblos ceded under the Gadsden Purchase were similar to those of New Mexico. (R. 192) In 1857, Sylvester Mowry wrote to Commissioner of Indian affairs that the Papagos were extremely anxious about tenure of their lands and inquiring if they would be allowed to remain. (R. 164) In 1863, the Superintendent of Indian affairs reported to the Commissioner of Indian affairs that the Papagos were anxious about their title to their lands and the adjustment of boundaries. (R. 166-167) In 1869, Lieutenant Colonel Thomas Devin of the 8th United States Cavalry reported to Commissioner of Indian Affairs that there were encroachments upon the Indian lands which had

made them discontented and their actions and movements caused great uneasiness in the vicinity. (R. 165) In 1874, the Indian Agent reported to the Commissioner of Indian Affairs that the question of title should be settled at once as the Indians were losing mining property, and water holes were being gradually taken from them, and that foreigners were squatting upon their lands (R. 164) In 1876, the Indian Agent reported to Commissioner of Indian Affairs that Mexicans were occupying the lands of the Indians and the Mexicans' stock was grazing upon the Indians' pastures the Indians being crowded out and the Indians requested by a council that they be removed (R. 165). The affairs of the Indians were getting worse, and finally, in 1885, the Indian agent took the attitude that the Indians must be shown that the chiefs are not greater than the government and the agent came to dispose of the chief; that if he was chief he is chief no more (R. 170) although it had been their desire to live at peace with the whites (R. 170).

The hereinbefore complaints of the Papagos had availed them nothing. They appealed to Bishop Salpont, the Bishop of the Catholic Church at Santa Xavier, who brought them in touch with one Robert F. Hunter (a lawyer) as a person to protect the Indians' interest to their lands. (R. 276) There was a room full of Indians. The Bishop was present and was looked upon as their friend and protector (R. 277). The notary public who took the acknowledgment recognized Ascension Rios, chief of San Xavier. An interpreter was present (R. 285) all the witnesses were honorable business men in the community (R. 287). The Indians came for the purpose of executing the power of attorney etc., (R. 289) and executed it (R.

282). Chief Rios was one of the signers and had been official interpreter for the government at various times for many years, since 1874 (R. 228-275)

The occurrence before the year 1880, and what happened up until 1909 when their land was opened under the enlarged homestead act of the United States, clearly show that the Pueblo of Santa Rosa and other villages did a wise thing in attempting to engage legal advice to protect their lands.

The Interior Department of the United States has not protected these people as it should have done. If the court at this time should dismiss this suit upon the ground of lack of authority, the merits of the case will never again be presented to a tribunal in their behalf for the action of the respondents and their agents clearly shows that they will not concede ownership of the land to them and they will not allow the inhabitants of Santa Rosa to confer with others with a hope of obtaining unbiased counsel in their behalf.

Emory's assurance to the Pimas (Papagos) that title to their lands under the Mexican Government was good and protected by the treaty (R. 186) was the assurance that should have been given to these people and all three branches of this government should uphold such a promise from any source. Counsel for the petitioner believe that it was a national promise to them that should be seriously considered by our courts.

THE INTERIOR DEPARTMENT OF THE UNITED STATES HAS CONFIRMED THE POWER OF ATTORNEY.

There was introduced in evidence a document (R. 275) headed,

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

Washington, D. C., January 13, 1885.

Directed to Col. Hunter and reads as follows:

“Dear Sir:

The Power of Attorney empowering you to act for the Papago Indians of Arizona is executed in accordance with custom and usage and are authority for you to represent the interest therein designated.

E. L. STEVENS,
Chief Clerk.”

Sec. 177-Fed. Stat. Ann. 2d Ed. Vol. 3, Page 255, provides that the chief assistant of the department may act in the case of absence or sickness of the head of the department.

Sec. 178 (same) page 256, provides that the chief clerk of any Bureau may act in the case of absence, sickness, etc., of the superior.

Construing these sections the United States Courts have held that if such person acts it is presumed that he acted lawfully within his authority.

Keyser vs. Hitz, 133 U. S. 138.
In re Jem Yuen, 188 Fed. 350.

The provisions of the acts do not require that any particular form is necessary to comply with the statutes requiring that contracts affecting title to land of Indian Pueblos (if this power of attorney can by any scope of imagination be construed to be a contract affecting title to the land) be approved by the Secretary of the Interior.

United States vs. Candelario, U. S. Supreme Court Advance opinions, July 1, 1926, Vol. 16, page 645.

Jose Maria Ochoa, the head chief and Luis, the Papago Chief of Santa Rosa executed the power in behalf of himself and the inhabitants of the Pueblos. This was an act of the Pueblo giving Hunter the power to retain attorneys and institute the suit.

THE CHIEF HAD THE POWER TO ACT FOR THE INHABITANTS.

The documentary evidence in the case shows:

In 1700, Father Kino formed a council of twenty-five (25) governors, many captains etc., (R. 204). In 1761, the governors with the Alcalde explained their contracts and questions which occur. (R. 200). In 1857, the chief had the power to surrender the individuals to the American and Mexican authorities (R. 171). In 1849, each village was governed by an old man and all by the governor of the nation (R. 198). In 1855, the head chief acted for the tribe (R. 186) In 1858 Fourteen of the Pueblos were present, represented by captains (R. 171). In 1863, the chiefs had more than ordinary intelligence. (R. 166) In 1864, the principal chief, learning of the abandoned condition of Charles D. Poston (which was communicated to Brig. Gen. Carlton) organized an escort to him. (R. 178). In 1865, in accordance with council of San Xavier Papagos raised one hundred and fifty warriors and the chief placed their men at the disposal of the United States Military authorities. (R. 168) In 1865, the Governor had the welfare of his people at heart. (R. 167) In 1874, the chiefs had knowledge of the laws and customs of

civilized people (R. 165). In 1875, Papagos lived in twenty-one villages, each governed by one great captain. (R. 164) In 1882, April 21, Ascension Rios (one of the signers to Hunter in 1880) executed a contract as chief of the Papagos of San Xavier wherein land for a right of way was granted to Arizona Southern Railroad. This agreement is executed exactly as the Hunter power of attorney and it shows authority and intelligence on behalf of the chief. (R. 177). In 1885, the Indians thought the chiefs greater than the United States Government. (R. 169)

The Power of Attorney in question executed to Hunter in 1880 reads in part as follows (R. 282) :

“Know all men by these presents, That we, Luis, Captain of the Village of Santa Rosa in the Territory of Arizona, for himself and the inhabitants of said village,” etc.

The contract by Ascension Rios just referred to, reads in part as follows :

“Articles of Agreement between Col. Sykes and Ascension Rios as chief of the Papagos of Santa Xavier” etc. (R. 177)

The court will see that the contracts made by the old New England Towns were very similar in form to the above and that such forms were the acts of the corporation. For example, see :

“Geo. M. Blanchard of the one Part and the Inhabitants of the town of Blackstone.”

Signed by individuals described as “Selectmen” held valid.

Blanchard vs. Inhabitants of Blackstone, 162 (Mass.) 343 (1869).

Also see

Inhabitants of Stoughton vs. Paul 175 Mass. 148
—(1899)
Waterport Water Co. vs. Inhabitants of Water-
port, 94 Maine 215.

The testimony shows by Indian witnesses as follows:

The leading men are advised in council what to do. (R. 75)

Whatever Con Quien (head chief) and the other captains did the people abided by it. They do what they agree. (R. 317). I have seen the first chiefs who had authority. The only way they managed their business was by council. (R. 320)

Forty years ago the chiefs would get together and Con Qinen would act as head chief. (R. 374) I understood Con Qinen to be head chief of all the captains of the villages (R. 376). He sent for all of them to come (R. 377). The Papagos thought the head chief had a great deal of power (R. 312). They went to him for their fields (R. 309-312). He claimed the land, but would not sell it. (R. 312)

THE INDIAN AGENT HAS SUPERSEDED THE HEAD CHIEF IN AUTHORITY.—(R. 310-314-374) THE TESTIMONY OF THE EDUCATED INDIANS, WITNESSES AND OTHER EVIDENCE SHOWS:

Lopez, an Indian, in pursuance of council, signed an affidavit on behalf of fifty Indians (R. 43). They delegated another to sign (R. 74). It is the custom of the head chief to transact business for all (R. 81-146-142). The Papagos looked upon their Governor as their su-

preme authority. (R. 120-123) The chief directed his men to accompany others through the Pueblo. (R. 151) When the whites desired to enter the Papago Pueblos they got authority from the captains. (R. 301)

After the council acted the chief gave consent to build a school house. (R. 322-331)

Witness Santeo, a highly educated Papago (R. 267) witness, said: If the chief wanted to employ counsel he could not without calling a council. (R. 399) He would not think of doing it in any other way. (R. 400).

Thus it may be seen that the chief had authority. Under the old New England town custom when a community acts as a town or unit and appointed officers for many years a town is presumed. *Town of Landenberry vs. Town of Andover*, 28 Vt. (2 Williams) 416 (424). If a contract recites that it was made by the President and trustees of a village it is good. *Parr vs. Village of G.* 72 N. Y. 463, (467)

SIXTEEN DIFFERENT PAPAGOS TESTIFIED THAT THE CHIEF WOULD DO NOTHING WITHOUT CALLING A COUNCIL. (R. 158-150-159-318-322-343-346-349-352-375-378-398).

The foregoing clearly establishes that the Power of Attorney executed to Hunter was pursuant to a council.

WE NEXT ASK THE COURT'S ATTENTION TO THE MANNER BY WHICH THE RESPONDENTS' AGENTS PROCURED FROM SOME INDIVIDUAL INDIANS THE DOCUMENT REQUESTING THE COURT TO DISMISS THIS ACTION (Ex. No. 6a) (R. 405).

Under this subject we particularly refer to and discuss Assignment of Errors Nos. 53 and 54, (R. 108-109) hereinbefore set out.

The facts from the evidence are that by stipulation the attorneys on both sides of this litigation spent from January 25, 1922, until February, 1922, in the Papago Indian country taking depositions of witnesses (R. 114) and that the attorneys for petitioner were present at all times for the purpose of cross-examining the witnesses who were examined on behalf of the respondents. That the respondents' attorneys could not advise in advance just when or where the deposition would be taken, but requested petitioner's attorneys to follow them over the Papago country and as they would have a witness available the deposition party would stop and his deposition be taken. (R. 366) In the respondents party there were Mr. George A. H. Fraser, Special Asst. Attorney General, Mr. Frank Thackery, Supervisor over the Papagos of the United States Indian Department, Mr. McCormick, then United States Indian Agent, Mr. Jose X. Pablo (a Papago) employed by the Indian Department at ninety dollars per month as supervisor over Papagos in regard to their cattle, Hugh Norris (a Papago) for twenty (20) years chief of Papago Indian Police (R. 391), Boneventure Oblessor, the Catholic priest with a mission in the Papago country.

For one week, during which time, the attorneys for petitioner were lead to believe that the respondent was endeavoring to bring in witnesses (R. 406-407), Mr. Thackery, Jose X. Pablo and the local Indian Police of Santa Rosa procured a number of Indian inhabitants of Santa Rosa to sign Exhibit 6—(R. 407). Attorneys for petitioner were not advised that said petition was

being distributed and had no way of learning such fact, for the reason that the Indians were instructed not to talk to petitioner's attorneys. (R. 365-366-367-368-144-79-81-150-337) It was not until seven or eight days later and after the "deposition party" had traveled one hundred miles from Santa Rosa that the respondents' attorneys attempted to introduce this said exhibit in evidence, over the objection that it was not competent evidence; that no opportunity had been given the petitioner to cross-examine the signers and that it was self serving; the objection and a motion to strike were overruled and an exception noted. (R. 407)

The evidence shows that the representation which had been made to the Papagos previous to date of Exhibit "6" are: In 1918 Bowie, a government Indian Agent, was sent to Santa Rosa on advice of government attorneys to get facts to see what position the defendants should take to defend this suit and to get affidavits. (R. 40-41-255) Some Indians refused to sign (R. 43). He testified that he tried to get their co-operation with the officials of the Government (R. 50) and told them what a good thing the reservation was (R. 265); that the suit, if sustained in court (R. 257) would take one-half their lands from them and he wanted to impress this upon them (R. 266-271-269). He did not tell them that this suit was to prevent the government officials from throwing those lands open to settlement. He did not believe that was the fact. (R. 266) He did not tell them the reservation might be taken away from them at any time. (R. 266)

Jose X. Pablo, the stock supervisor for Papagos (the Papago Indian who interpreted at the meeting at Sells, April 20, 1918, when there were one hundred

Indians present from all over the reservation) testified: The Indians were told that the suit was to take one-half their land by Hunter (R. 308). They were not told that the suit was to establish their title (R. 307) They were told to be on their guard. (R. 329)

So in 1922, at the time Exhibit "6" was signed the Indians thought generally that this suit was to their detriment and that the suit was to take one-half their lands. (R. 336-359-385) John Wilson, a Papago, educated at Carlisle, was so advised (R. 341) he, and many others were led to believe that the order creating the reservation gave the Papagos absolute ownership of their lands, so far as title was concerned. (R. 342-352-386) They never heard that the suit was to protect their titles. (R. 350-362)

The only witnesses examined openly upon this subject at which the petitioners were afforded an opportunity to cross-examine, were Antonio Morino who testified substantially as follows:

The Papagos are very jealous of their land rights and if a suit should be started relative to their rights, they would want to be protected. (R. 385). We believe we have absolute ownership in all the Papago Country. If a suit should be started in Court to protect their rights we claim, we would want the court to try the case and render a judgment protecting our rights. If any man was interested enough to go into court and protect our rights we would want him to (R. 386). We want our title fixed so that it can not be taken away from us. We don't want even the government itself to be able to take away the lands that belong to the Papagos. I don't think the government is thinking of taking it away. It seems that the Government has men to protect us. We think the

reservation gives us title to the lands forever. (R. 386).

And another Papago testified:

“If the government should say that the lands are not ours then we are willing to go to court and find out whether it is or not.” (R. 379)

From the foregoing facts, and considering the fact that the Papagos who signed Exhibit No. “6” did so as individuals, and the chief did not sign it nor is it shown to be signed pursuant to council, we think defendants’ Exhibit No. “6” complained of should not have been received and considered by the Court.

The records show that after 1885 Hunter did what was in his power for the Papago Indians and particularly in 1903 he petitioned the Secretary of the Interior and contended that the Papagos were the owners of the lands (R. 245).

In 1909, the respondents disregarding the plaintiff’s rights, offered all the lands of the Pueblo of Santa Rosa, opened to enlarged homestead entry and settlement. (Stipulation R. 138 and Map. Pl. Ex. A. same page).

In 1910 Hunter caused Brown and others to come with a view of instituting the present suit.

THE INHABITANTS OF SANTA ROSA HAD KNOWLEDGE OF PREPARATION, INSTITUTION AND PROSECUTION OF THIS SUIT AND APPROVED ALL ACTS OF THE ATTORNEYS.

The facts from the evidence are: In 1910, Brown came with information and talked to Hugh Morris,

Chief of Papago Indian Police (R. 268-394), who told Jose X. Pablo, the most intelligent Papago on the whole reservation (R. 268) and other Papago chiefs (R. 397). Brown also told Tom Day in 1910, (R. 148) and he told the Papagos (R. 149) Guittard told them from 1910 to 1915 (R. 79-84-409-410-391-370) and they approved. (R. 79-81-84-142-143) From 1913 or 1914 Edwin Santeo, an educated Papago, went amongst all the Papagos and the suit was seriously considered and discussed with the old chiefs (R. 399-400). He talked to Konderone, chief at Santa Rosa in 1915, and in 1916 they were showing considerable interest. (R. 400) Thackery, the government Indian Agent in 1914, heard of the case at that time and after the institution of the suit went to Santa Rosa and held a meeting of thirty-five or forty Papagos, including the chief and one or two head men, and he visited Day's store and interviewed him. Thackery explained the matter and some told him that men had been there to see them about the same thing, and the next three or four years he made inquiry of the different people and villages. There is not one iota of evidence that during the first three and one-half years of this suit that the Pueblo of Santa Rosa or the Indian inhabitants thereof, ever objected to the suit nor until the activity of the respondents' agents hereinbefore shown. It is a conspicuous fact in the case, that Thackery reported it to a Pueblo meeting with the chiefs and head men present and they offered no objection to the suit. On this point the court's attention is asked to the language of a New York State Court as follows:

"The defendant moves to stay the plaintiffs' proceedings, on the ground that the attorney is

not authorized to bring the action. The instances in which such relief is proper, are rare. They should probably be limited to those in which there is actual fraud on the court; in which an attorney, without the knowledge or consent of a plaintiff, is using his name in a wrongful manner. Generally it is best that only the plaintiff himself should be allowed to complain that the action is without his authority, and that his silence on this point should be considered to give consent. There is an obvious reason why such a motion as this should be seldom granted. The plaintiff has no notice of it. For the very ground of the motion is, that the attorney for plaintiff does not in fact, lawfully represent him, and therefore, if the defendant's view of the facts is correct, the notice of motion given to the plaintiff's attorney, is no notice to plaintiff. We are asked, therefore, to prevent a plaintiff from proceeding in an action, and to do this without giving him or any one who represents him an opportunity to be heard. The Court would never do this in the case of a natural person plaintiff. But the defendant urges that the present case is different from other cases, in that the plaintiff is a quasi municipal corporation. These facts, however, appear: The pendency of this action is known to the inhabitants of the town. It has been reported to the town at a town meeting, and no opposition or objection made. It can not be said that there is a fraudulent use of the name of the town, and it seems reasonable to suppose that, if this action is conducted without the approbation of the town, the defendant or some other person could call a town meeting to direct its discontinuance. That would be a better remedy than this application. The defendant, however, insists that the authority to bring an action, can only be given at an annual town meeting or at a meeting specially called; and that an action, commenced without such authority, can not afterwards

be ratified. It is not best to decide that question of law, on an application which is addressed to our discretion. If the fact that this action was commenced without such authority is a legal defense, then the defendant should have pleaded it (as in fact he did), and the matter should be tried at the circuit. If the fact is not a legal defense, but is only available on such a motion as this, then in exercising our discretion, we should consider that the town has actual notice of this action and has not repudiated it. We ought not to interfere, without its request, to protect it from acts of an attorney whom it is implicitly recognizing. If the motion is for its protection, let it make it. If it is for the defendant's benefit, let him make this defense, if it is a defense, at the trial. There has been delay in moving. The cause was at issue and noticed for trial when proceedings were stayed for the purpose of making this motion. Yet the defendant had knowledge of the facts long before.

Order suspending proceedings reversed''

The Town of Delhi vs. Graham 3 Hun 407.

This view is also taken in the case of

Republic of Mexico vs. DeArangoiz 5 Duev. 643.

A careful reading of the next authority cited shows that after the opposing party to an action, either by neglect or design fails to avail himself of the right to call upon the attorney for information as to his warrant of authority and instead permits him to state his defense by pleading in bar to the action, it would be unreasonable and contrary to all the principles of legal analogy as well as the established rules of practice and pleading, that he should (afterwards) be per-

mitted to embarrass and arrest the regular progress of the case upon the issue joined. *Campbell vs. Gilbreath* 5 Watts (Pa.) 423 (427).

The respondents knew of the preparation and institution of this suit from the time the witness Thackery went among them in 1914. They knew of its institution for they were promptly served, they elected to file a motion to dismiss in the nature of a demurrer and elected to stand upon this motion without further answering when the case was before the Court of Appeals in 1917. It was obviously their intention to obtain a decree upon the merits in that court and settle the litigation, but having been unsuccessful there they carried the case to this court by appeal. Never was the authority of counsel questioned up to that time.

On the third day of January, 1919, the Solicitor General of the United States informally requested the attorneys for petitioner to furnish their authority to represent their client and on the 9th day of January, 1919, such authority was furnished and no objection thereto was made at that time. Thus it can be seen that the defendants acquiesced in and recognized the authority of the attorneys for petitioner by thereafter appearing before this Honorable Court without objection on the 29th day of January, 1919, and contended for a decree of this court which could have determined this case forever. They were willing that the authority of counsel be deemed sufficient if the decree should be in their favor, but the decree being adverse to them they went back to the trial court and there raised the question and submitted a petition of individual Indians in an attempt to repudiate the authority of counsel. The individual Indians were not honestly informed as to the purpose of the suit; they were told that it

would take one-half their lands (R. 308) ; to be on their guard (R. 329) and they were not told that the suit was to protect their lands. (R. 307) The Indian police of Santa Rosa was active in procuring it (R. 407).

Counsel for the petitioner feel that it is proper to deny the respondents the right to raise this question after the case has been considered by the highest court of our country.

It will be remembered that the attorneys whose authority is questioned appeared as attorneys for the petitioner and was recognized as such by the respondents at all times up until this case was decided by the Supreme Court of the United States, March 3, 1919, and also recognized the attorneys for petitioner as such after respondents had filed their motion to dismiss for alleged lack of authority on June 9, 1919, by entering into stipulations to advance for trial May 26, 1922, and to close the testimony August 22, 1922, (R. 90). Thereafter, all pleadings were regularly served upon the respective attorneys to this suit without reservation or objection.

Particular attention is asked to the fact that the authority of Louis Kleindienst to represent the Pueblo of Santa Rose has at all times been recognized and the record does not show that his authority has ever been questioned. He entered into stipulations with the respondents' counsel to take all depositions in the Indian country, July 25, 1922 (R. 114). The lack of anything to the contrary in the record upon the question of authority of counsel is presumed.

6 C. J. 631, citing 255 cases
Osborn vs. Bank 9 Wheaton 738-830
Brown vs. Arnold 131 Fed. 703

Aaron vs. U. S. 155 Fed. 833

Kissick vs. Hunter 184 Pa. 174

Romiller vs. Schuster Co. 212 Fed. 348.

The Supreme Court of California has said:

“By admitting service of papers on a motion for a new trial by an attorney for defendant, without objection, and by serving papers in plaintiff's behalf on such attorney, the objection that the attorney is not the attorney of record is waived.”

The opinion says:

“While it is true that said notice was signed by a different attorney, still it is apparent that any objection upon that ground was waived by appellant, in recognizing and treating the said attorney as representing the defendant on the motion for a new trial, by receiving and admitting service of papers from him in her behalf, without making or reserving any objection on that account at the time, and by serving papers in the appellant's behalf upon such attorney. Upon this subject it is said in Hayne on New Trial & Appeal, p. 59, at close of section 13: ‘But where the notice is not properly signed, the successful party must reserve his objection on that account at the time it is served upon him, and not treat the notice as sufficient. If he recognizes the attorney giving the notice as the one having authority to give it, he will not afterwards be permitted to question his authority. This is the rule with respect to notices of appeal, and it undoubtedly applies to notices of intention.’” Smith vs. Smith, 145 California 615.

With full knowledge of the facts the respondents have proceeded with this suit for eleven years, recognizing the attorneys for the petitioner as such and dur-

ing the first four and one-half years made no question of their authority although they were possessed of full knowledge of the facts. Such procedure estop the respondents from denying the authority of counsel at this time. The head note of a case in the District of Columbia Court recites:

“After an appearance entered at a previous term, it is too late to call for the authority to appear.” *Rogers vs. Commelin* 20 Fed. Cases, No. 12009, 1 Cr. C. C. 536.

AUTHORITY OF COUNSEL NOT PART OF THE MERITS OF A CASE AND SHOULD NOT BE RAISED AT TRIAL.

The determination of the authority of counsel is between different parties and is tried in an entirely different manner than issues of a case are tried.

As a matter of fact, the question of the authority of counsel was legally waived when the original motion to dismiss, in the nature of a demurrer, to the bill of complaint was filed in this case in 1915.

In Vol. 6 C. J., at page 635, the rule is stated as follows:

“The authority of an attorney to represent his alleged client cannot ordinarily be questioned at the trial.”

citing cases from Alabama, Indiana, Kentucky, Maine, Michigan, New Hampshire, New York, North Carolina, Texas, Vermont, and Virginia.

Or, in an appellate court, citing *Williams vs. Butler*, 35 Ill., 544; *Noble vs. State Bank*, 3 A. K. Marsh. (Ky.), 262; *Bogardus vs. Livingston*, 2 Hilt. (N. Y.),

236; *Shroudenbeck vs. Phoenix Fire Insurance Co.*, 15 Wis., 632. Such an objection should be made promptly. *Williams vs. Uncompahgre Canal Co.*, 13 Colorado, 469; *Kissick vs. Hunter*, 184 Pa., 174; *Mix vs. People*, 116 Ill., 265 (holding that delay of two years was fatal); *Mason vs. Stewart*, 6 La. Ann., 736 (several years' delay held fatal); *O'Flynn vs. Eagle*, 7 Mich., 306 (holding that delay from May to October was fatal); preferably at the term at which appearance is first made; otherwise the adverse party waives the want of authority and consents to the appearance of the attorney. *State vs. Harris*, 14 N. Dak., 501; *Herrel vs. Prince William County*, 113 Va., 594.

The application for plaintiff's attorney to show authority should be made before a plea is filed. *Rouillier vs. Schuster Co.*, 212 Fed., 348; *Doe vs. Abbott*, 152 Ala., 243, 246; *Reece vs. Reece*, 66 N. C., 377; *Campbell vs. Galbreath*, 5 Watts (Pa.), 423; *Mercier vs. Mercier*, 5 Dall (Pa.), 142.

Pleading the general issue seems to be a waiver of all objections to authority. *Lucas vs. Georgia Bank*, 2 Stew. (Ala.), 147.

See also Authority contained in 2 Enc. Pl. & Pr., 680.

This question was fully discussed in the Virginia Law Review of May, 1921, where some of the above authorities were cited, the author concluding from the cases that the matter of questioning the authority of an attorney for plaintiff could not be raised in the answer or in the plea, and also cites *Bonnifield vs. Thorn*, 71 Fed., 924, 927.

In the case of *Gage vs. Bell*, 124 Fed., 371, it is stated on page 379, as follows:

“Necessarily it is the practice in all courts to treat the attorney appearing for a litigant as duly

authorized thereto by that litigant. The authority to appear must exist, to be sure, but it is conclusively presumed, or assumed rather, by the court, unless it is formally and by a special proceeding known to the practice called in question. 3 Enc., L. (2d Ed.), 349; Id., 375. The defendant cannot by answer or plea set up want of authority in the plaintiff's attorney, but he must make a rule upon him to show his authority, supported by affidavit as to the facts. *Martin vs. Walker*, Abb. Adm. 579; Fed. Cas. No. 9170; *Howe vs. Anderson* (Ky.), 14 S. W., 216; *Hill vs. Mendenhall*, 21 Wall., 453. The reasons for this rule are well illustrated by this case. The courts could not conveniently do the business of litigation if either litigant could capriciously embody in his pleadings the collateral matter of the authority of the attorneys, respectively, to appear and file their pleadings. Every litigation would degenerate into a preliminary inquiry about the attorney's dealings with his client."

See also the following cases in point:

Indiana, etc., Ry. Co. vs. Maddy, 103 Ind., 200; *Louisville, etc., R. Co. vs. Newsome*, 13 Ky. L. Rep. 174; *Upham vs. Bradley*, 17 Me., 423; *Norberg vs. Heineman*, 59 Mich., 210; *Manchester Bank vs. Fellows*, 28 N. H. 302; *People vs. Lamb*, 85 Hun (N. Y.), 171; *Rowland vs. Gardner*, 69 N. C., 53; *Spaulding vs. Swift*, 18 Vt., 214, 218; *Knowlton vs. Plantation No. 4*, 14 Me., 20; *Low vs. Settle*, 22 W. Va., 387; *Rogers vs. Crommelin*, 20 Fed. Cas. No. 12,009; *Mix vs. People*, 116 Ill., 265, 268, 272.

This matter is entirely on the same principle as where jurisdiction of the person in some instance is questioned after general appearance has been made and it has always been held that the objection comes

too late. *Citizens Trust & Guaranty Company of W. Va., vs. Garrettson*, Vol. 44, Washington Law Reporter, page 313 (S. C. D. C.); *McAdeo vs. Ormes*, 47 App. Cas, D. C. 364, 372 (Opinion by Mr. Justice Van Orsdel); affirmed, 252 U. S. 469.

The decree of the trial court is in two distinct parts. (R. 100) Paragraph "one" overrules the motion to dismiss for want of authority of counsel. Paragraph "two" dismisses the case upon the merits with costs in favor of the defendants.

Plaintiff appealed from the decree of the court as set forth in the second paragraph thereof and so notified counsel for defendants that it was limiting its appeal to that part of the decree only (R. 111).

The defendants below did not appeal from any portion of the decree.

A motion to dismiss for lack of authority of counsel can be made, it is true, but a defense on the merits can not be made on that ground. The parties are different. The motion to dismiss for lack of authority of counsel in reality affects counsel only. The plaintiff itself could supply other counsel and remain in court or refile its action by other counsel. In other words, the question of the authority of counsel cannot in any manner enter into the merits of the case. It is as distinct as another case would be.

Respondents not having elected to appeal or cross appeal from that portion of the decree overruling the motion to dismiss for lack of authority cannot now raise that question in any manner, shape or form.

Where only one party appeals, the other is bound by the decree of the court below, and he cannot assign error in the Appellate Court nor can he be heard if the proceedings in the appeal are correct, except in support

of the decree from which the appeal of the other party is taken. In other words, a party who does not take out a writ of error, cannot be heard to complain of any adverse rulings in the court below.

The William Bagaley, 5 Wall., 377; The Quickstep, 9 Wall., 665; The Maria Martin, 12 Wall, 31; The Mary Ford, 3 Dall., 188; Mackall vs. Mackall, 135 U. S. 167; The Des Moines, 154 U. S., 584; U. S. vs. Blackfeather, 155 U. S., 180; The Chattahoochee, 173 U. S., 540; Malarin vs. U. S., 1 Wall., 282, 287; Harrison vs. Nixon, 9 Pet., 483; Canter vs. American Insurance Co., 3 Pet., 307; Stratton vs. Jarvis, 8 Pet., 4; Buckingham vs. McLean, 13 How., 150; Compton vs. Jesup, 167 U. S., 1; Southern Pacific R. Co., vs. U. S., 168 U. S., 1; Bolles vs. Outing Co., 175 U. S., 262.

An appeal brings up for review only that which was decided adversely to appellant. Chittenden vs. Brewster, 2 Wall., 191; The Steven Morgan, 94 U. S., 599; Loudon vs. Taxing District, 104 U. S., 771, 774.

We believe that this case well illustrates the vice of permitting the question of authority of counsel to be raised at all as a plea to the merits because it does confuse the court and does tend to draw the court away from the real merits of the case. There is no doubt that the trial court was greatly confused in trying the two issues together.

The attempt to confuse this court and counsel for petitioner by injecting into the case here the matters contained in their motion to dismiss in the trial court is most inequitable. In a matter which vitally concerns the prosperity and future and even the life of these Indians, it is an attempt to throttle this suit without a determination upon the merits, to deprive the Indians of their "day in court," and to take away

from them the benefit of the Supreme Court decision which should be the charter of their liberties and the basis of their prosperity. This suit, if prosecuted to a successful conclusion and not otherwise, will put them on the sound basis of the New Mexico Pueblos.

The character of the fight made by the respondents for the last ten years and the contentions pressed by them and the history of other Indians not protected by communal titles as the New Mexican Pueblos, prove that if this suit is stifled no other similar suit will be permitted; that the organization of the Indians already crumbling will be destroyed; that the policy of misrepresentation and oppression will be carried out to its logical conclusion; that the Indians will be reduced to the pauper conditions of the ordinary reservation Indians and that in time and in a very short time, powerful interests will deprive the Indians even of their reservation and that they will be scattered and found working in the gangs upon the railroads and other public works.

The respondents have never since this suit was commenced permitted the Indians' attorneys to consult freely with the Indians, and in fact when the case came on for trial in the taking of testimony refused the attorneys any right of consultation with the Indians and warned the Indians against talking to their attorneys. It was iterated and reiterated to the Indians that the only purpose of this suit if the Indians won, was to take away half of their lands. The Indians were led to believe that they had absolute title to all these lands and that appears in the testimony of practically all of them, whereas, as a matter of fact, it is merely a reservation by proclamation and since the proclamation was made another proclamation took 500,000 acres of

this same land away (R. 28). If history repeats itself in this case it is only a matter of time until even the reservation of this land will be swept away and the Indians be left to drift whither they may to obtain a living.

It is respectfully submitted that an order should be entered by this Honorable Court sustaining the existence of authority of counsel to represent the complainant, so that this cause may be placed upon the docket for a hearing upon the merits, to the end that the decrees of the Court of Appeals and of the Supreme Court of the District of Columbia shall be reversed, with costs.

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 511

PUEBLO OF SANTA ROSA, PETITIONER

v.

ALBERT B. FALL, SECRETARY OF THE INTERIOR, AND
William Spry, Commissioner of the General
Land Office

*ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF APPEALS OF THE DISTRICT OF COLUMBIA*

**BRIEF FOR THE RESPONDENT COMMISSIONER IN
OPPOSITION**

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia, not yet reported, is found at page 423 of the record. The opinion of the Supreme Court of the District of Columbia is found at page 90 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered April 5, 1926. (R. 431.) A petition for re-

hearing was entertained and denied April 24, 1926. (R. 441.) Jurisdiction of this Court to issue the writ is found in Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

STATEMENT

Since Albert B. Fall is no longer Secretary of the Interior and the petitioner took no steps in the lower court to substitute his successor, this brief is presented only on behalf of the Commissioner of the General Land Office, the remaining respondent.

The complaint (R. 1) filed January 28, 1915, averred that plaintiff from time immemorial has been a town known by the name of the Pueblo of Santa Rosa; that from time immemorial it has occupied a definite tract of land 24 miles by 30; that under the Spanish and Mexican law it became and is the absolute owner thereof, and that the defendants were offering the land for entry as public land of the United States and should be enjoined from so doing. No written grant was pleaded and the alleged title depends upon the general laws of Spain and Mexico. A motion to dismiss based principally on the ground that the plaintiff had no right or capacity to sue was sustained by the trial court and the bill dismissed. (R. 11-21.) An appeal was taken in 1916 to the Court of Appeals of the District of Columbia, which reversed the trial court and ordered a permanent injunction against the defendants. (*Pueblo of Santa Rosa v. Lane*, 46 App., D. C., 411.) An appeal followed to this Court,

which in 1919 reversed both the lower courts and sent the case back with instructions that the defendants be allowed to answer and that the case be tried on the merits. (*Lane v. Pueblo of Santa Rosa*, 249 U. S. 110.) Up to that point the only thing before the courts was the bill of complaint and this Court held that the allegations of the bill if true showed that the plaintiff was a pueblo with the capacity to sue, and that the bill of complaint showed the Indians had a complete and perfect title. This Court said (p. 114):

In view of the very broad allegations of the bill, the accuracy of which has not been challenged as yet, we have assumed in what has been said that the plaintiff's claim was valid in its entirety under the Spanish and Mexican laws, and that it encounters no obstacle in the concluding provision of the sixth article of the Gadsden Treaty, but no decision on either point is intended.

When the case reached the Supreme Court of the District of Columbia on mandate from this Court on June 9, 1919, the defendants filed an answer (R. 22) denying the allegations of the complaint, and alleging that there was no such entity as the Pueblo of Santa Rosa, but that Santa Rosa is merely a geographic name describing a large district of indefinite extent, containing various scattered Indian villages; that neither the alleged village nor any Papago village has fee title to the land it occupies or anything but the ordinary In-

dian occupancy title, which title under the Papagos' own theory belongs to the whole tribe. The answer alleged that the tract described in the complaint, considered as an ascertainable tract claimed or occupied by any Papago village, is a myth; that its boundaries are incapable of accurate ascertainment; that no Papago village as such claims any definite tract of land; that the description in the complaint was taken from one of the various sixteen deeds given by various Papago chiefs in 1880 to one Hunter, Trustee, each purporting to convey one-half interest in a tract of land assumed by the draftsman of the deed to represent the property of the village or group of villages. (R. 31.)

The answer also denied that the defendants were attempting to deprive the Indians of any interest in the land and alleged that the United States was protecting the Indians in the occupation of the district and had created reservations for that purpose.

The answer also alleged that the so-called Pueblo of Santa Rosa had never authorized the suit and that counsel who appeared for it had no authority to represent it, if there were such a pueblo.

Simultaneously with the filing of the answer the defendants filed a motion to dismiss (R. 33), accompanied by affidavits, alleging want of authority from the Indians to institute the suit and the invalidity of a certain power of attorney given on the same date as the deed of 1880, which was the basis

of the authority claimed by counsel for instituting the suit in the name of "Pueblo of Santa Rosa." It was set forth in the motion papers that the Solicitor General first learned of this want of authority while the case was in this Court. This motion was presented to the trial Court, but on February 28, 1921, the Supreme Court of the District of Columbia filed a memorandum (R. 87) expressing the view that it would be better to have this point disposed of at the hearing on the merits, saying: "The decision of the motion to dismiss will be postponed until the final hearing of the cause and an order to this effect will be signed on notice and presentation." (R. 89.) Thereafter the case was tried on the merits.

The decision of the Supreme Court of the District of Columbia was filed May 22, 1924 (R. 90), ordering the dismissal of the bill. The Supreme Court of the District assumed "but without deciding" that the plaintiff is a pueblo or municipality and assumed "but without deciding" that it owned and held the lands in suit exclusively for its own benefit. It held that the evidence showed that the pueblo had never authorized the suit and that counsel had no authority to conduct the suit in its name. The trial court made no findings of fact bearing on the question whether there is a Pueblo of Santa Rosa. On appeal to the Court of Appeals of the District the decree of dismissal was affirmed. The Court of Appeals, however, seems to have concluded that there is a municipality

" Pueblo of Santa Rosa." Its opinion refers, not so much to the evidence in the record, as to matters it took judicial notice of on the former appeal, and which this Court evidently considered insufficient. It decided that the questioning of the authority for the institution of the suit was " not only improperly injected into the present case, but it came too late " (R. 428), and then decided that Article 6 of the Gadsden Treaty, to the effect that no " grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico," operated to defeat the suit because it did not appear that the grant in question had ever been located or duly recorded.

In determining whether a writ of certiorari should issue this Court may consider not only the ground on which the Court of Appeals decided the case, but any other grounds which would be open to this Court to consider on the record which would justify the affirmance of the judgment below.

In addition to the point arising under the Gadsden Treaty the respondent contends that the so-called pueblo never authorized this suit and that the objection on that ground was made seasonably and in the proper way; that the evidence shows that there is no Pueblo of Santa Rosa and that there was a complete failure of proof that the respondents were attempting in any way to deprive the Papago Indians of any interest in the district where they lived; and that instead of opening these lands to

entry, the United States had set them aside as reservations for the Papago Indians.

No Indians are back of this suit. No Papago Indian community in Arizona has authorized or ratified it. When informed by the Government of its pendency, the Papago Indians repudiated it and petitioned the trial court for its dismissal. (R. 404-5; 407-8.)

Under date of December 8, 1880, a person describing himself as "Luis, Captain of the Village or Pueblo of Santa Rosa, in the Territory of Arizona" undertook for himself and the inhabitants of the village and certain other villages to convey to one Robert F. Hunter the undivided half of lands alleged in the conveyance to be owned by the said villages of Santa Rosa and described in the deed as containing some 720 square miles. At the time this deed was given Luis signed a power of attorney under which he undertook to appoint Hunter "our true and lawful attorney, to represent and prosecute in our names, or the names of the said inhabitants of said village before the Government of the United States" claims for grants of tracts of land situated in said territory. The power contained a provision that as it "is accompanied with an interest vesting in our said Attorney, for a valuable consideration, it is hereby made irrevocable." (R. 94-5.) Hunter made some sporadic attempts before the Interior Department to have the rights of the Papagos recognized as a fee title, but the Secretary of the Interior held that

it was a mere right of occupancy (R. 245), and little or nothing was done under these deeds or power of attorney until nearly thirty years later when Hunter entered into an agreement with one R. M. Martin, of Los Angeles, by which the latter undertook to prosecute proceedings to have the Indian title acknowledged and a partition between the Indians and Hunter and Martin of the undivided half interest conveyed by the deed.

At the time of getting the deed and power forming the foundation for this suit, Hunter secured sixteen other conveyances from various Indian chiefs for an undivided half interest in approximately 2,000,000 acres of land constituting nearly one-half of the Gadsden Purchase. None of these deeds were even recorded until June 2, 1914, some thirty-three years after their execution. The chiefs are dead, and Hunter, the donee of the power, is dead. The Papago Indians whose testimony was taken, some of whom were living at the time of these alleged conveyances, never heard of them and the substance of their testimony was that there had been no consultation with the members of the tribe about the deeds and the chiefs had no authority to make them.

The circumstances under which the deeds were given are described by Ainsa, the notary, and the only survivor of those present. (R. 276-298.) None of the Indian chiefs present could read or write or speak English. The documents were in English but the interpreter could not read them.

A chief called Con Quien signed nine of the seventeen deeds, assuming, or being made by the managers of the puppet show to appear to assume authority to act in place of eight absent chiefs. There is nothing to suggest that any chief had any authority to convey the interest of the tribe in any lands.

Martin is shown to be the real party in interest, who has caused the institution of this suit in the name of the alleged Pueblo of Santa Rosa without any authority whatsoever except that claimed to be derived from the power of attorney made in 1880, above described. It is evident that the purpose of the suit is to enable Martin and others to whom he has sold "chances" on the successful outcome of this litigation to profit by acquiring title to one-half of the land occupied by the Indians, and that the suit is not in the interest of the Indians but directly opposed to their interests.

The evidence showed that the Government has made no attempt to deprive these Indians of any interest in these lands but on the contrary it has carefully protected and assisted them. The position of the United States and its authorities has been that these lands are public lands of the United States subject to Indian occupancy and possession, a right which has been carefully guarded. Government agents have supervised the affairs of the Papagos since 1858. Appropriations for Arizona Indians to assist them to locate in permanent abodes and sustain themselves by the pursuits of civilized life and for general purposes have been

made annually from 1864 to the present time in ever-increasing amounts. (13 Stat. 180, 559; 14 Stat. 279, 512; 15 Stat. 219; 35 Stat. 75, 786; 36 Stat. 272, 1062; 41 Stat. 1232.)

In 1912, 1913, and 1914 appropriations were made for the development of water supply for domestic and stock purposes and "for irrigation for *nomadic* Papago Indians in Pima County, Arizona." In 1914 the sum of \$50,000 was appropriated for Papago schools. (38 Stat. 584.) A hospital is maintained at Sells. In each of the years 1914, 1916, 1917, and 1918 the sum of \$20,000 was appropriated for pumping plants, tanks, and water supply for eight Papago villages. In 1919 the sum of \$10,000 was appropriated to fence the boundary between the main Papago reservation and Mexico (40 Stat. 569), and \$52,000 for maintaining waterworks and constructing new wells at seven more villages (41 Stat. 10). Many other appropriations for similar purposes were made between 1874 and 1912; seven reservations were created for the Papagos by Executive order (R. 20), and in 1916 a reservation of about 2,800,000 acres was set apart (R. 28). In 1917 this was reduced on petition of the Arizona Legislature and other bodies to 2,443,000 acres by taking out a strip from East to West through the center in order to leave a passage for persons and cattle. This reservation was made on the petition of the Papagos themselves and now covers most of the Papago country. Almost all of the Indian occupancy is

therefore protected by the reservation and any part lying within the withdrawn strip is protected by the general rule announced by the Department of the Interior to grant no titles to public lands in Indian occupancy. (R. 271, 274.)

A large amount of testimony was taken bearing on the question whether the Papago villages are pueblos or municipal entities. Testimony discloses that the Papagos live in an arid country in which the only permanent sources of water are in or near the foothills of small mountain ranges; that they both farm and raise livestock under conditions which require them in the winter to occupy villages in the foothills where there is a permanent water supply for their stock, and in the summer to move to small villages in the valleys where they have fields which they cultivate. Adobe houses are matters of recent development among the Papagos; their huts have been usually of poles and grass. No village has any defined or corporate limits. Papago Indians claim individual ownership only of the small fields which they use for cultivation and the broad range of additional area is occupied by the Papago Nation or Tribe. It is open for use by any and all Papagos. No one village claims any definite portion of this area and cattle belonging to members of all villages roam indiscriminately over it. Witnesses stated that there was no single village or "Pueblo" of Santa Rosa, but that the name Santa Rosa was used by the Indians in conversing with persons not Indians when re-

ferring to any one of several villages clustered together over an area of 5 to 8 square miles in the Santa Rosa valley. These villages, which are four in number, are summer villages of the Papagos. The Indian names for the villages are Kaicheemuch, Achi, Akchin, and Anegam. The district occupied by the Papagos has not been sharply defined and the description used in the bill of complaint seems to have originated in the deed to Hunter.

ARGUMENT

THE COURT OF APPEALS CORRECTLY CONSTRUED THE GADSDEN TREATY AND THERE ARE ADDITIONAL REASONS DISCLOSED WHY THE WRIT OF CERTIORARI SHOULD NOT ISSUE

Article 6 of the Gadsden Treaty, so far as relevant, reads:

No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to * * * [September 25, 1853] * * * will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico. (10 Stat. 1031, 1035.)

Assuming that plaintiff is a pueblo with the capacity to sue, and that the suit was brought with its authority and that it had acquired an interest in the lands in question which were "subject to recognition by the Government of Mexico," as the Court of Appeals said, it will be conceded that no proceed-

ings were ever instituted during the period of Spanish or Mexican sovereignty to have the title established or made a matter of record. It seems clear that Article 6 of the Gadsden Treaty covered a case of this kind. The word "grant" as used in the Treaty is not limited to rights acquired by written deeds. In *Strother v. Lucas*, 12 Pet. 410, 436, it was said:

This Court has also uniformly held that the term grant, in a treaty, comprehends not only those which are made in form, but also any concession, warrant, order or permission to survey, possess or settle, whether evidenced by writing or parol, or presumed from possession * * *.

In the case of *Lane v. Pueblo of Santa Rosa*, 249 U. S. at page 112, the Court referring to a law of the Territory of New Mexico, said:

* * * One of those laws provided that the inhabitants of any Indian pueblo having a grant or concession of lands from Spain or Mexico, such as is here claimed, should be a body corporate and as such capable of suing or defending in respect of such lands

—a statement indicating that a right such as is here claimed is a grant or concession within the meaning of the Gadsden Treaty. There is every reason why Article 6 of the Gadsden Treaty should be construed to apply to a case of this kind. If the Treaty requires the rejection of a regular written title evidenced by deed unless the claim has been located and recorded, it certainly requires

the rejection of a parol or possessory title where clear identification on the ground is essential to show the exact limits of possession, and because the absence of a survey and location of boundaries proves that the Governments of Spain and Mexico had never recognized the claim as valid.

But there are obviously other reasons for refusing the petition for certiorari. Assuming that there is a Pueblo of Santa Rosa, the findings made by the trial court show conclusively that Martin's authority for instituting the suit in the name of the Pueblo was derived entirely from the power of attorney and deed made by Chief Luis in 1880; that the power has lapsed through the death of the donee unless a valid power coupled with an interest, and that the interest relied on to keep the power alive is the attempted conveyance by Chief Luis to Hunter of an undivided half of the Indian lands, a conveyance which the record shows was wholly unauthorized, without any right or authority. The Court of Appeals was evidently acting under a misapprehension in stating that the objection to the authority came too late when presented at the trial on the merits. It was presented by motion at the time the answer was filed and then insisted on, and only deferred by the trial court. The law is in a strange state if it is ever too late in the progress of litigation to procure the dismissal of a suit upon conclusive evidence that the suit was brought in the name of one who had

not authorized it, and who does not want it prosecuted, and that the successful prosecution of the suit would result to the detriment and loss of the one in whose name it is being prosecuted, and the purpose of the one responsible for the litigation is to line his own pockets at the expense of the one whose name he is using.

There is in addition the point that there is no Pueblo of Santa Rosa with capacity to sue. Lacking findings of the trial court on this question, we may only refer to the evidence in the transcript which we are confident supports the view that the Papagos present an entirely different picture than the Pueblos of New Mexico. The established policy of the United States for more than half a century has been to treat the Papagos as seminomadic with no definite title to any definite tracts of lands, but with mere Indian right of occupancy, and the Papagos themselves have acquiesced in this treatment and have benefited by it.

The Papago Indians will not be bound by the judgment which has been rendered in this case. The very evidence which the respondent relies on to show want of authority for the maintenance of this suit would enable the Papagos in their turn, if they ever see fit so to do, to relitigate any question involved in this case free from the claim of *res adjudicata*. Whether Santa Rosa is a pueblo with a capacity to sue and whether the pueblo has a title to definite tracts of land unaffected by

Article 6 of the Gadsden Treaty are questions which, if they are to be decided by this Court, should be considered in a case instituted for the Papagos under their authority and with their consent.

The petition for certiorari should be denied.

Respectfully submitted.

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AUGUST, 1926.



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Sec. 2103 (Sec. 3, Act of March 3, 1871, c. 120, 16 Stat. 544, 570, as amended).....	41



In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 511

THE PUEBLO OF SANTA ROSA, PETITIONER

v.

ALBERT B. FALL, SECRETARY OF THE INTERIOR, AND
William Spry, Commissioner of the General
Land Office

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT COMMISSIONER

OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeals of the District of Columbia is reported in 12 F. (2d) 332 and is found at page 423 of the record. The opinion of the Supreme Court of the District of Columbia is found at page 90 of the record.

GROUND'S OF JURISDICTION

The judgment of the Court of Appeals was entered April 5, 1926. (R. 431.) A petition for re-

hearing was entertained and denied April 24, 1926. (R. 441.) Petition for certiorari was filed July 13, 1926, and was granted October 25, 1926 under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The order granting certiorari said (R. 442):

And it is further ordered that this cause be, and the same is hereby, assigned for hearing on January 10th next, after the cases heretofore assigned for that day, on the issue as to the existence of authority of counsel who filed the bill to represent complainant.

Since the only authority claimed is based on a power of attorney signed in 1880, the question presented is whether the power was authorized or valid in the first place, and whether its authority ceased before the suit was commenced by lapse of time or death of those involved.

In this connection the question arises whether certain conveyances by Papago Chiefs in connection with the giving of the power were authorized and valid.

An attempt is also disclosed to establish a ratification by the Indians of the commencement of the suit.

The question is also presented whether the fact of want of authority, if established, was properly raised by the respondent or may be considered by the Court on its own motion.

STATEMENT

Since Albert B. Fall is no longer Secretary of the Interior and the petitioner took no steps in the lower court to substitute his successor, this brief is presented only on behalf of the Commissioner of the General Land Office, the remaining respondent.

The only authority of counsel who commenced the suit to institute it in the name of and on behalf of the alleged Pueblo of Santa Rosa rests on a power of attorney made in 1880 by Luis, a Papago Chief, to one Hunter, as a part of a transaction by which Luis executed a deed purporting to convey to Hunter an undivided one-half of lands in which the Papagos claimed an interest. Hunter, who is dead, made a contract with one Martin by which the latter, in consideration for an interest in the lands so conveyed to Hunter, undertook to prosecute the suit to assert title to the lands as against the United States and to have a partition of the Indians' interest. It is Martin who has employed counsel and caused this suit to be instituted.

The complaint (R. 1) filed January 28, 1915, averred that plaintiff from time immemorial has been a town known by the name of the Pueblo of Santa Rosa; that from time immemorial it has occupied a definite tract of land 24 miles by 30; that under the Spanish and Mexican law it became and is the absolute owner thereof, and that the defendants were offering the land for entry as public land of the United States and should be enjoined from

so doing. No written grant was pleaded and the alleged title depends upon the general laws of Spain and Mexico.

The bill of complaint was signed "The Pueblo of Santa Rosa, By Henry P. Blair, Attorney of Record." Indorsed below was "Rounds, Hatch, Dillingham & Debevoise; Cates & Robinson, Henry P. Blair, Attorneys for Plaintiff."

A motion to dismiss, based principally on the ground that the plaintiff had no right or capacity to sue, was sustained by the trial court and the bill dismissed. (R. 11-21.) An appeal was taken in 1916 to the Court of Appeals of the District of Columbia, which reversed the trial court and ordered a permanent injunction against the defendants. (*Pueblo of Santa Rosa v. Lane*, 46 App. D. C. 411.) An appeal followed to this Court, which in 1919 reversed both the lower courts and sent the case back with instructions that the defendants be allowed to answer and that the case be tried on the merits. (*Lane v. Pueblo of Santa Rosa*, 249 U. S. 110.)

Up to that point the only thing before the courts was the bill of complaint and this Court held that the allegations of the bill if true showed that the plaintiff was a Pueblo with the capacity to sue, and that the bill of complaint showed the Indians had a complete and perfect title. This Court said (p. 114):

In view of the very broad allegations of the bill, the accuracy of which has not been challenged as yet, we have assumed in what

has been said that the plaintiff's claim was valid in its entirety under the Spanish and Mexican laws, and that it encounters no obstacle in the concluding provision of the sixth article of the Gadsden Treaty, but no decision on either point is intended.

When the case reached the Supreme Court of the District of Columbia on mandate from this Court on June 9, 1919, the defendants filed an answer (R. 22) denying the allegations of the complaint, and alleging that there was no such entity as the Pueblo of Santa Rosa, but that Santa Rosa is merely a geographic name describing a large district of indefinite extent, containing various scattered Indian villages; that neither the alleged village nor any Papago village has fee title to the land it occupies or anything but the ordinary Indian occupancy title, which title under the Papagos' own theory belongs to the whole tribe. The answer alleged that the tract described in the complaint, considered as an ascertainable tract claimed or occupied by any Papago village, is a myth; that its boundaries are incapable of accurate ascertainment; that no Papago village as such claims any definite tract of land; that the description in the complaint was taken from one of the various sixteen deeds given by various Papago chiefs in 1880 to one Hunter, Trustee, each purporting to convey one-half interest in a tract of land assumed by the draftsman of the deed to represent the property of the village or group of villages.

The answer further alleged that Hunter, in 1911, contracted to sell three-quarters of his half interest to one Martin of Los Angeles, California, the latter binding himself to secure by suit the segregation of the lands from the public domain, and then to partition them between Hunter, or his successors and the Indians, "*all proceedings to be instituted in the name of the Indian inhabitants of the respective villages named in the deeds.*" (R. 26.)

The answer also denied that the defendants were attempting to deprive the Indians of any interest in the land and alleged that the United States was protecting the Indians in the occupation of the district and had created reservations for that purpose.

The answer also alleged that the so-called Pueblo of Santa Rosa had never authorized the suit and that counsel who appeared for it had no authority to represent it, if there were such a pueblo.

Simultaneously with the filing of the answer the defendants filed a motion to dismiss (R. 33), accompanied by affidavits, alleging want of authority from the Indians to institute the suit and the invalidity of a certain power of attorney given on the same date as the deed of 1880, which was the basis of the authority claimed by counsel for instituting the suit in the name of "Pueblo of Santa Rosa." It was set forth in the motion papers that the Solicitor General first learned of this want of authority while the case was in this Court on the first appeal; that he thereupon asked to be informed as to the

authority of counsel appearing for the Pueblo of Santa Rosa, for bringing the suit and in reply was furnished by said counsel with a copy of an alleged power of attorney purporting to have been executed November 8, 1880, by one "Luis Captain of the Village of Santa Rosa—for himself and the inhabitants of said village—" of the first part and the said Hunter, party of the second part, together with a certain instrument in writing dated May 31, 1911, executed by said Hunter appointing one Alton M. Cates, one of the counsel who filed this suit, to the power alleged to be vested in Hunter by the power of attorney from the said Luis.

The motion further averred that no Pueblo of Santa Rosa, as a municipal corporation had ever authorized the suit, that the alleged authority contained in the power of attorney did not purport to be executed on behalf of the Pueblo of Santa Rosa, a corporation, or on behalf of the inhabitants of the Pueblo or corporation, but on behalf of said Luis as an inhabitant of the village of Santa Rosa, and on behalf of the inhabitants of Santa Rosa and three other villages named therein. This motion did not concede the existence of any Pueblo of Santa Rosa but averred that neither the villages named in the power nor the inhabitants of the villages knew of the suit until long after it had been brought and none had authorized said suit, nor ratified nor approved it. Five separate reasons were assigned why the alleged power of attorney and its substitution were void. (R. 33-35.)

The motion was accompanied by a copy of the letter from counsel for the alleged plaintiff stating that their authority to bring the suit was conferred by the said power of attorney and substitution and that counsel was "advised that the inhabitants of Santa Rosa are cognizant of the fact that the suit is pending and are in sympathy with the result sought to be obtained." (R. 36.)

The motion was also supported by 32 affidavits (R. 40-78), four of which were by Government agents, relating their unsuccessful efforts to find some knowledge of the suit and authorization therefor among inhabitants of the village alleged to constitute the Pueblo of Santa Rosa (R. 40, 43, 46, 48). The remainder were by Papago Indians living in the Santa Rosa region, which showed that after an exhaustive search on the ground no one could be found who had authorized the suit, or who knew counsel who had brought it, or had even heard of its existence until long after it was instituted, or until Government agents brought word of it; and that if any authority to sue had been given, affiants would have known of it, because of their status and the customs of their people. (R. 45, 47, 51-78.)

Proof of the death of Hunter, donee of the power, on February 19, 1912, was filed later but before argument on the motion. (R. 84, 87.)

Counsel for the alleged Pueblo of Santa Rosa filed the affidavits of W. T. Day and C. B. Guittard

(R. 79, 84) to rebut the affidavits filed in support of the motion to dismiss.

Hearing was had on the motion to dismiss the cause, and the trial Court on February 28, 1921, filed a memorandum (R. 87) in which it was said (R. 88):

The contentions on behalf of the motion to dismiss take a wide range and at points may be said to reach the merits of the case. Were it granted an appeal would no doubt follow, and if on appeal the order of dismissal was reversed the parties litigant would be no nearer a final determination of the rights asserted in the Bill of Complaint than they were when the case previously began its appellate course.

The case is one which, it seems to the Court, calls for a complete judicial investigation and a final determination, especially in view of the careful consideration given to it heretofore by the appellate tribunals, and it would be unfortunate if it were now to go off on a question of a want of authority to institute the present proceeding. And yet grave reasons have been presented in support of the pending motion that should not lightly be brushed aside, or disposed of at this time. Nor need they be.

The defendants have answered the Bill of Complaint and a final hearing can take place in which all contested matters, or such of them as the Court may consider necessary for a just determination of the case, can be adjudicated. If this course is taken, it will not deprive the defendants of the right to

press the grounds set up in support of the pending motion, and it will be in harmony with the directions of the Supreme Court in sending the case back to this Court.

The court then concluded (R. 89):

The decision on the motion to dismiss will be postponed until the final hearing of the cause * * *.

An order was filed April 15, 1921, postponing decision on the motion until final hearing of the cause. (R. 89.)

Counsel for the alleged plaintiff Pueblo and the defendants thereafter proceeded with the taking of testimony which, on the hearing of the cause, was duly presented to the trial court.

This testimony, by depositions and certain documentary evidence, occupies pages 114 to 422 of the Record. Examination thereof will disclose that many of the Papagos, whose affidavits were filed with the motion to dismiss, were examined and cross-examined, as were many others, and that, throughout the entire record, testimony concerning the authorization of the suit, and knowledge thereof or its ratification, was taken along with testimony directed to issues raised exclusively by the answer.

This testimony clearly disclosed the origin of the power of attorney relied on by counsel for the alleged plaintiff and further disclosed that one Martin was the real party responsible for this suit, and that its object was hostile to the interests of the alleged Pueblo and of the Papagos individually.

It was shown that, as early as 1874 a controversy existed between the Right Reverend J. B. Salpointe, Roman Catholic Bishop, of Tucson, Arizona, and agents of the Indian Bureau sent to the Papagos country to look after the Indians in connection with reservations then created, and including San Xavier Church and schoolhouse. (R. 226-229.) The agents charged the Bishop with oppression of the Indians and activities directed to their enslavement, and the acquisition of certain of their lands, and opposed what they regarded as acts by the Bishop to that end. (R. 228-230.)

The details of this controversy down to the winter of 1880 are not clear, but in December, 1880, identified by many witnesses by reference to "the year the railroad came to Tucson," a meeting was held at the house of Bishop Salpointe, at which the Bishop was present for a short time. Robert F. Hunter, of Washington, D. C., claiming to represent the Catholic Missionary Society, was present at this meeting, as were Santiago Ainsa, a notary public; several residents of Tucson as witnesses; a Mexican woman, one Teodora Troiel, who assumed to act as an interpreter; and a number of Papagos, who, except one Ascension Rios, Chief of San Xavier (R. 285), remain unidentified unless by the signatures to certain deeds and powers of attorney there executed.

The circumstances surrounding this meeting, and others at which similar deeds and powers of attorney were executed would rest in obscurity except

for the testimony of Ainsa, the notary, the only person living who was present when the deeds and powers of attorney were executed. Special attention is invited to his testimony. (R. 276-298.)

Ainsa was then 40 years of age and an attorney at law, practicing at Tucson. He donated his services as notary at the request of Bishop Salpointe and Hunter, who represented that the latter was arranging to protect the interests of the Indians in the lands they had and wished the deeds or instruments executed "for the benefit of the Indians and for the church in part." (R. 277.) There were apparently several meetings at which deeds and alleged powers of attorney were executed. Two such meetings were at the house of the Bishop, at Tucson; one or more others at San Xavier. Ainsa acted as notary at each.

On the first occasion, Bishop Salpointe was present. There was a roomful of Indians, "the Bishop came in and he explained to them, then he retired." (R. 277.) Hunter was present and in charge of all subsequent proceedings aided by the Mexican woman interpreter. All seemed prearranged. (R. 277, 278, 286, 289, 297.) The deeds and powers were made out before these meetings and apparently carried the name of the Indian who purported to sign the deed or power, and each Indian, upon something being said by the Mexican woman, Troiel, appeared to Ainsa to acknowledge the name signed to the particular instrument before him, as his own,

and either then made their mark or were made by the interpreter to appear to confirm a mark already made. (R. 277, 286, 289, 293-5.) None could write his name. (R. 294.)

Ainsa was a Catholic and acted unquestioningly through belief in the integrity and good purposes of the Bishop and Hunter. The Papagos, also generally Catholics, were under the influence of the Bishop (R. 149) and seemed to act from the same trust as Ainsa, and not through any comprehension of the import of the papers which they signed but merely in the belief that by signing the papers presented to them their interests would in some manner be advanced. (Ainsa, R. 227, 285, 288, 289.) "It was the Bishop that we obeyed, they to make the grant and I to certify to it." (Ainsa, R. 297.)

The evidence is conflicting as to the ability of the interpreter, Teodora Troiel, to speak Papago as well as Spanish. Certain of her neighbors testified that she could not speak Papago. (R. 299, 381, 382, 383, 386.) Certainly she neither spoke nor understood English, the language in which the deeds and powers of attorney were written. (Ainsa, R. 286. Castillo, R. 383.) This fact is undisputed. It seems reasonable to conclude from the conflicting testimony (R. 295, 299, 381, 382, 383, 386) that this Mexican woman spoke only a few words of Papago, just as the Papagos who spoke any Spanish possessed only a few words and idioms sufficient to enable them to be understood, by Mexicans, on ele-

mentary, everyday matters about them. Certainly these Papagos could not carry on a conversation in Spanish and none of them spoke or understood English. (R. 285.)

A leading figure in this transaction, if the deeds and powers are correct, was one Con Quien, sometimes styled Coon Can by white men, who also, on this occasion, used the name Jose Maria Ochoa. This Papago is made to appear in one deed as head chief of all the Papagos. That he was self-appointed to this position, or assumed it for the purposes of the occasion of granting the lands of *all* the Papagos, as an apparent precaution on the part of Hunter and the Bishop, was established beyond doubt. Papagos who had known him repeatedly denied that he held such a position. (Jose Pablo, R. 306-7; Blain, 315-6; Bailey, 321-2; Marcos, 333; Wilson, 341, 343; Cachora, 344; Sam Pablo, 346; Lopez, 347; Ignacio, 358; Paoli, 361; Kisto, 363; Castro, 370; Jose Juan, 371; Luciano, 372; Barnebe Lopez, 377, 379; Aragon, 380; Castillo, 382; Norris, 393-4; Santeo, 399.)

Others stated that Con Quien was a good talker and used to give advice to other chiefs of villages whom he called to him and who relied upon him. (Geronimo, 312-3; Nacho, 317.) This power to call other chiefs in conference rested in any chief learning of a matter of general interest. (Lopez, 376; Nacho, 317.)

At the meetings referred to 16 deeds to Robert F. Hunter, Trustee, were drawn and acknowledged

(as related by Ainsa) by various Indians. Each of these deeds purported to convey an undivided half interest in described tracts alleged to be the lands, grants, and privileges owned by the villages named therein. The fields under cultivation at the time of execution of each deed were specifically excepted from the operation thereof. (R. 278-285.) No description of the area so excepted appeared in the deeds.

The alleged grantors signed as headmen or captains of the villages. As to nine of these conveyances Con Quien assumed, or was made by the managers of the puppet show to appear to assume to act, with authority, in lieu of eight absent chiefs. (R. 278-282.) He joined as cograntor in some of the remaining deeds, and using his alleged Spanish name of Ochoa, professed, in a final deed, to convey as chief of all the Papagos an undivided half interest in *all the Papago lands* in Arizona, comprising practically everything south of the Gila River, west of the Santa Cruz River, to the Mexican boundary, and as far west as the junction of the Gila and Colorado Rivers, including 25,000 square miles of territory, this being about half of the area in the Gadsden Purchase. (R. 284.)

Among these deeds was one from "Luis, Captain of the village of Pueblo of Santa Rosa, in the territory of Arizona, for himself and the inhabitants of said village and the villages of Aitij, Semilla-que-mada and Chaquima." The description in the com-

plaint was plainly taken from, and repeats almost verbatim, the description in this deed. (R. 3-4, 278-9.)

Each of these deeds was accompanied by a power of attorney to the said Hunter made by the same grantors as in the corresponding deed. The power from Luis (R. 282-4) is that upon which counsel assumed to bring this suit.

The power purported to be given by "We, Luis, Captain of the village of Santa Rosa—for himself and the inhabitants of said village—" and recited that he was duly authorized and empowered to make, enter upon, and execute contracts; issue, make, and acknowledge powers of attorney and do other legal acts to bind and obligate the inhabitants of the said village of Santa Rosa.

This power was sweeping in its provisions and authorized Hunter "to represent and prosecute in our name, or the names of the said inhabitants of said village" before all branches of the Government, or wherever necessary, "any and all matter of difference, contest or dispute that may attend or arise in the course of settlement, adjustment, determination, compromise or recognition of our title, claims and demands, whether at Law or Equity, and of whatsoever nature, to and for certain grants or tracts of land situate in the said territory the title to which is vested in us or said inhabitants." The attorney was empowered to take whatever action he should deem necessary to accomplish the purposes enumerated, with full

power and authority to adjust or compromise all claims and demands, *and to receive a money equivalent for lands conveyed, "the amount to be satisfactory to our said attorney, and to be by him determined."* The power also recited:

Hereby granting to our said attorney full powers of delegation, substitution and revocation. And as this power of attorney is accompanied with an interest vesting in our said attorney, for a valuable consideration, it is hereby made irrevocable.

In this power, as in the deed from Luis, plural pronouns "we", "us", and "our" appear repeatedly, disclosing the conception of the draftsman of these papers that the headman was a petty monarch with plenary power over the Indians and the lands occupied by them.

The conveyances were without consideration, unless there be implied some undertaking on the part of the grantee to perform some service in establishing claims of the Indians.

In 1881 Hunter attempted to represent the Papagos before the United States Surveyor General of Arizona. That officer pursuant to the Acts of July 22, 1854 (c. 103, 10 Stat. 308, 309), and July 15, 1870 (c. 292, 16 Stat. 291, 304) had primary jurisdiction to inquire into and make findings of fact concerning the rights of Indians in Arizona under the Gadsden Treaty. The controversy which ensued is fully shown in the Record. (230-244.)

It is shown that Hunter secured the suspension of action on the mineral entry for the Santa Tomas

mine to permit examination by the Surveyor General of "the evidence of a Spanish or Mexican grant for pueblo or village purposes" in favor of the Papago Indians and conflicting with the mineral application. (R. 230.) At the same time Hunter, who signed as attorney for the Papagos, applied for a similar examination of a like alleged title to lands claimed by sixteen named Papago villages. (R. 235.)

The Surveyor General at once questioned the authority of Hunter to represent the Papagos, pointing out that a delegation of Papago chiefs had appeared before him in their own behalf, accompanied by an interpreter, advancing a claim to certain lands at San Xavier del Bac and were heard, but at no time intimated that they had any counsel or attorney to represent them. The Indian claims on that occasion were taken up by the Surveyor General with the United States agent for the Papago Indians, as their representative. (R. 233.)

In dealing with Hunter, the Surveyor General expressed complete readiness to conduct the investigation sought if Hunter would either produce the chiefs concerned in person or their Indian agent and have them advise that they constituted Hunter their attorney, or else present a letter from the Indian agent, the Commissioner of Indian Affairs, or the Secretary of the Interior to the effect that Hunter was actually recognized as attorney for the Papagos. (R. 238.) Hunter persistently eluded

this reasonable requirement, urging that he should be recognized, first, because the Commissioner of the General Land Office had stated that the files of that office showed that he appeared of record as attorney for the Papago Indians in the matter of the Santa Tomas mine application (R. 234, 237), and, further, because he was a practicing attorney at law and should be presumed to have authority to represent his alleged clients. (R. 239.)

The Surveyor General insisted upon compliance with his requirements, fortified therein by his general practice in such cases (R. 240) and especially insisted upon in this instance because of information given him by Ainsa, the notary public, that one Hunter, believed by the Surveyor General to be R. F. Hunter, had in 1881 secured 100 deeds to himself from a number of Papago and Pima chiefs. (R. 242.) Hunter never complied or attempted to comply with the requirement of the Surveyor General and after a discussion lasting from March, 1881, to September, 1882, a patent for the Santa Tomas mine was issued. (R. 244.)

In 1903 Hunter by letter to the Secretary of the Interior made the same claim of ownership of lands in the Papago country as is urged in this suit. The Secretary, noting a possible lack of authority in Hunter to present the questions, declined to entertain this claim, expressing the view that the Indians' rights were those of occupancy only. (R. 244-6.)

In 1910, one Brown, a distant relative of Hunter, visited the Papago country with a new set of powers of attorney, confirming the powers given to Hunter in 1880, and setting forth an agreement for the partition of the lands around ten Papago villages. Hugh Norris, a Papago Indian, was engaged to secure the names of the oldest chiefs in each village to these instruments and was promised \$100 for each signature so produced. Norris was unable to secure any signatures, as the Indians had never heard of the earlier powers, disbelieved the whole scheme, and refused to seriously consider it. (R. 142, 337, 382, 390, 394-5, 397-8.)

In 1911 two contracts were made by Hunter with one R. M. Martin, of Los Angeles. (R. 246-250.) The contract of May 17, 1911, is the important one, as therein Hunter arranged with Martin *the segregation from the public domain of the United States* of lands described in 10 of the deeds executed in 1880, to Hunter, *trustee*, and *to secure the partition of said lands* between Hunter and his successors and the Indians. Martin, in consideration for these services, and certain cash payments, was to be conveyed an undivided three-fourths interest in the lands partitioned to Hunter, and was to have an option to purchase Hunter's remaining one-fourth interest for \$250,000. (R. 248-9.)

This contract further provided:

All proceedings for the segregation of said respective tracts of land from the public domain of the United States are to be insti-

tuted and conducted in the name of the Indian inhabitants of the said respective villages or pueblos under and by virtue of the several empowerments to Robert F. Hunter, as evidenced by the general powers of attorney are herein and hereby referred to as a part of this agreement, and said Robert F. Hunter hereby agrees on demand of the party of the second part hereto to delegate to the counsel of the party of the second part power and authority under the provisions of the general powers of attorney, made and executed to him for the Indian inhabitants of said villages, respectively.

It will be noted from these contracts that although Hunter took whatever rights the deeds of 1880 conveyed *as trustee* for secret or undisclosed beneficiaries, these contracts of 1911, though signed by him *as trustee* deal with the property as that to accrue to him in his own right, and upon his death, pursuant to the terms of his will, a distribution was directed to be made to members of his family of the present and contemplated proceeds of the Martin contract. (R. 251-252.)

On May 31, 1911, Hunter executed a substitution of the powers of 1880 including the Luis power to Alton M. Cates, of the firm of Cates and Robinson, which signed the complaint as attorneys for plaintiff. (R. 9.) This attempted substitution was more than 31 years after the original power was executed. (R. 98.) Cates claimed no interest in any of the lands and there can be no doubt but that he secured

this power as attorney for Martin, pursuant to the contract of May 17, 1911. (R. 249.)

Long prior to the entry of Martin and Cates into the matter, Luis, the apparent donor of the power, had died. (R. 97, 252-3, 360, 371.) Hunter died February 19, 1912 (R. 85), and Alton M. Cates died November 23, 1920 (R. 252). Thus the donor of the alleged power died before anything was attempted under it; the donee died before this suit was brought; and the substituted donee died before the hearing of the case on the motion challenging authority for the suit and on the merits. (R. 90.)

The Santa Rosa deed of 1880 was recorded in Pima and Pinal Counties, Arizona, on June 2 and June 8, 1914, *nearly thirty-four years after its alleged execution*. (R. 280.) The other deeds have been similarly recorded at dates varying from thirty-four to thirty-nine years after their execution. The county seat of Pima County is Tucson, where the deeds were executed. No evidence explanatory of the delay in recording these deeds has been offered.

On May, 18, 1914, Rounds, Hatch, Dillingham, and Debevoise, lawyers of New York, who later appeared for the alleged plaintiff in this suit (R. 9, 93, 214) presented to the Secretary of the Interior a petition making claims identical with those in the complaint, on behalf of certain communities including Santa Rosa. In this case reference was made

to "*our client R. M. Martin, Esq., of Los Angeles, Cal., who has a large interest in the tracts of land in question, under a contract with Col. Hunter.*" (250-1.) Martin also admitted to an agent of the United States that he had employed Cates and Robinson and the New York firm to conduct the litigation required by his contract with Hunter. (Bowie, R. 265.)

Martin, after his contract with Hunter, proceeded to advertise and sell for \$1,000 each, units or chances, in the possible proceeds of the contemplated litigation, sending one C. B. Guittard, an employee, over the area on several occasions, the first trip being in 1911. (R. 82-3, 388-9.)

Unceasing efforts were made by Government agents from 1918 to 1922 to ascertain from the Indians whether they had any knowledge of a suit, instituted or contemplated, concerning lands which they claimed and whether such a suit had been authorized by the council of any village or any of its inhabitants. These inquiries included mass meetings or councils of the Indians not only from the Santa Rosa district but elsewhere. While a few Indians were found who had heard of the proposed suit, apparently from Martin's representatives, none had authorized it or knew anything about it. (R. 403.) These meetings, held after 1918, included inquiries concerning the alleged transactions of 1880, yet no Indian was found who had heard of the meeting at Tucson, or of the

of the Pueblo of Santa Rosa (R. 326-328, with map).

The evidence heretofore summarized bearing exclusively upon the deed and power of attorney cited as authority for this suit by the attorneys using the name of the alleged Pueblo, was interwoven with other evidence bearing on the issue as to whether there was and is in fact a Pueblo of Santa Rosa; whether, if such a pueblo exists, it claims, or has title to the lands described in the bill of complaint, or any of them; and whether such a claim is founded upon any grant or concession either from the kingdom of Spain, or from Mexico, and whether the defendants had taken any action or were threatening to take any steps in disregard of or injurious to any valid claim or title which the alleged pueblo now has.

While the only question now being considered is the authority of counsel, that authority depends on the deeds and powers of 1880, consideration of the validity and effect of which requires an understanding of the circumstances of the Papagos.

The history and status of the Papagos under the sovereignty of Spain and Mexico were shown by excerpts from accounts of early explorations throughout the Papaguera or Papago country, and by books and public documents of Spanish and Mexican origin. (R. 183-226.)

Both Spaniards and Mexicans had all they could do to maintain themselves against hostile Indians,

among whom the Papagos were from time to time classed, except when there was joint action against the common foe, the Apache. The visitador general (R. 223) twice recommended the removal of the Papagos. The names given on the maps of Kino and others did not designate prosperous Spanish missions and settlements, but merely Indian rancherias (R. 220-1). The Papago villages "were but hamlets compared with those of their southern brethren." "They could scarcely be called village Indians." They "were shunned and feared." They "roamed over rather than resided in the southwestern corner of Arizona." (R. 224-5.)

No written grant, or concession from Spain or Mexico was produced, nor was it shown that such a formal grant or concession had ever been made, recorded, and thereafter lost. Title by prescription was the most that was suggested.

Certain public documents which were judicially noticed by the Court of Appeals when the case was first before it (46 App. D. C. 411) were introduced at the hearing of the case. These with others were reports to the Commissioner of Indian Affairs or to the Congress concerning the Papagos and commenced about 1856, which was shortly after the acquisition of the Gadsden Territory. (R. 163, 188, 193.) In addition excerpts from books written about the Papagos were introduced. (R. 189-191, 193-6, 197-8.) These stated in substance that the Papago Indians, as of 1856 and before, were a

peaceable tribe living in small villages, engaged in raising wheat, corn, cotton, and vegetables, and having houses and flocks. Certain of these stated that the houses were of adobe construction similar to those of the Pueblo Indians of New Mexico.

Deposition testimony of a large number of living Papagos disclosed their tribal life, the character of their villages, and the claim which they assert to the lands involved and other lands generally throughout the Papago country. Testimony of the Indians, whether introduced by the plaintiff or by the defendant, disclosed substantially the same facts. Several of the witnesses were over 80 years of age and many others were from 45 to 65 years old, so that their testimony from actual knowledge related to conditions existing long prior to 1880 and prior to the creation of reservations of the lands which they occupied.

The territory known as the Papago country is arid and the only permanent sources of water are to be found in or near the foothills of small mountain ranges. The Indians farm and raise livestock, which requires that in the winter they occupy villages in the foothills where there are permanent sources of water for their stock, and in the summer they move to small villages in the valleys, where moist ground suitable for cultivation is found. These villages are mere clusters of huts. Formerly almost all the huts were made of grass or poles, occasionally having thatched roofs

covered with mud. Adobe houses are a matter of recent development. (R. 158, 160, 304, 318, 320, 334, 342, 343, 347, 348, 352, 361, 371, 372.) These houses with repair lasted from 5 to 20 years. (R. 304, 320, 334.) Under an early custom a house was burned if a death occurred therein. (R. 304-5, 334, 373, 394.)

The villages have no definite limits (R. 160, 161, 338), and the houses are located without any definite plan in contrast to pueblos of permanent construction (R. 339, 352). No village claims any definite tract of land. (R. 303, 319, 321, 347, 373.) The only claim of ownership known was as to fields under cultivation and Papagos could take fields wherever vacant. (R. 161, 303, 311, 315, 316, 318, 319, 340, 343, 345, 348, 373, 378.) Nor was it necessary that consent be secured from the chief or headman of the village near which the field was located. (R. 161, 346, 348.) A field once taken for cultivation remained in the family until abandoned, passing from father to son. (R. 158, 160, 161, 303, 307, 311, 315, 318, 319, 333, 341, 343, 348, 349.)

The field was, however, apparently not regarded as salable, for no Papago was ever known to sell a field. (R. 160, 318, 341, 353, 369.) Cattle roamed at will throughout the Papago country and were not confined to any zone, through a view that said territory was in any wise appurtenant to the village in which their owner resided. (R. 160, 161, 303, 306, 319, 321, 333, 341, 343, 345, 348, 357.) On the contrary, the view of the Indians was that the Pa-

pago country belonged to all the Papagos and was free to use by them wherever unappropriated. (R. 158, 161, 162, 163, 307, 322, 344, 347, 357, 373, 378, 383.)

Each village had a chief or headman (R. 162, 311, 336, 344, 346), but there was no fixed procedure for selecting a chief (303, 304, 317, 346). Matters of importance were invariably taken up by the chief with the inhabitants of the village assembled in council, but there was no special board or group consisting of designated council members. (R. 162, 304, 311, 318, 319, 353-4, 357.) In the early days there was possibly some organization of the Indians with tribal recognition of one Indian as head chief, but such an arrangement had not existed within the memory of living Papagos. (R. 342, 344, 347, 361.) Con Quien was the only Indian known to have assumed such title, and his authority was generally denied. (R. 312, 315, 317, 322, 341, 344, 346, 375, 379, 380.)

No chief or headman could sell land belonging to the Papagos. (R. 158, 159, 304, 311, 318, 323, 333, 341, 343, 357, 369.) Such a matter would have required consideration by the Indians assembled in council (R. 158, 159, 311, 333, 344, 369, 372), and no sale of land by such a procedure had ever been known (R. 322, 323, 341, 344, 369). Similarly, authority to bring a suit in the white man's court would have required consent of the Indian council. (R. 311, 345, 351, 369.)

While the Indians claim to own as a tribe all the lands in the Papago country and had, prior to the creation of Indian reservations, asserted that right for themselves, they relied upon the Government to exclude white men and to keep them in the enjoyment of their lands as had been their custom. (R. 311, 313, 321, 323, 342, 347.)

Santa Rosa is a name applied to a locality or district, flanked by the Santa Rosa mountains, and the villages therein are known as Santa Rosa villages. (R. 145, 306.) No single village of Santa Rosa was known until about 1917 when a Government school was established at Kaicheemouek, and referred to as Santa Rosa. (R. 302, 339, 392.) Each village had an Indian name, while "Santa Rosa" was a Spanish term used by Papagos to designate the locality in talking to Mexicans. (R. 159, 160, 301-2, 347, 352, 361, 373, 375, 388, 392.) The specific villages within this district which were collectively referred to as "Santa Rosa" were the subject of conflicting testimony. One white witness named Kaichumuck, *Achi*, Kivibo, and Iloitak. (R. 324-5.) Another said Kaichumuck, *Achi*, Akchin, Makunavais, and Quewa. (R. 258.)

Plaintiff's counsel adopted Kiacheemuck, *Achi*, Anegam, and Akchin as the villages making up "the Pueblo of Santa Rosa." (R. 161, 162.) The deed and power from Luis named the village of Santa Rosa and the villages of Aitij, Semilla-quemada, and Chaquima. (R. 278.) One of the 16

deeds given to Hunter, trustee in 1880, was by Con Quien signing as Jose Maria Ochoa, for lands around the village of Kakachemouk. (R. 281.) This clearly referred to "Kiacheemouck," and seemed, so far as could be found, to intend to describe lands which were largely covered by the deed from Luis. Similarly a deed on behalf of the inhabitants of "Anaca" referred to Anegam and related to lands described in the Luis deed. (R. 327-8 and map.)

Taking Kiacheemuck, Achi, Anegam, and Akchin, as the group most generally embraced by the term "Santa Rosa," it was found that these were valley or summer villages, from which in winter or dry weather the inhabitants removed to mountain villages, generally occupied by the same people as inhabited a corresponding summer village. (R. 160, 161, 302, 307, 361, 363.) Each of these villages had its own chief, and the inhabitants met in separate councils on matters affecting the village alone. (R. 162, 346, 348, 349, 351, 357, 365, 370, 387, 391, 393.)

. None of these villages nor the group ever claimed ownership of any lands to the exclusion of Papagos from other villages. (R. 303, 347.) Nor did Luis, who was headman at Achi, ever assemble his village or the others of the group in council concerning his alleged transfer of an interest in the lands in 1880, nor concerning his attempted appointment of R. F. Hunter as attorney for them. (R. 357, 361, 363, 372.)

The evidence showed that the Government has made no attempt to deprive these Indians of any interest in these lands but on the contrary it has carefully protected and assisted them. The position of the United States and its authorities has been that these lands are public lands of the United States subject to Indian occupancy and possession, a right which has been carefully guarded. Government agents have supervised the affairs of the Papagos since 1858. Appropriations for Arizona Indians to assist them to locate in permanent abodes and sustain themselves by the pursuits of civilized life and for general purposes have been made annually from 1864 to the present time in ever-increasing amounts. (13 Stat. 180, 559; 14 Stat. 279, 512; 15 Stat. 219; 35 Stat. 75, 786; 36 Stat. 272, 1062; 41 Stat. 1232.)

In 1912, 1913, and 1914 appropriations were made for the development of water supply for domestic and stock purposes and "for irrigation for *nomadic* Papago Indians in Pima County, Arizona." In 1914 the sum of \$50,000 was appropriated for Papago schools. (38 Stat. 584.) A hospital is maintained at Sells. In each of the years 1914, 1916, 1917, and 1918 the sum of \$20,000 was appropriated for pumping plants, tanks, and water supply for eight Papago villages. In 1919 the sum of \$10,000 was appropriated to fence the boundary between the main Papago reservation and Mexico (40 Stat. 569), and \$52,000 for maintaining waterworks and con-

structing new wells at seven more villages (41 Stat. 10). Many other appropriations for similar purposes were made between 1874 and 1912; seven reservations were created for the Papagos by Executive order (R. 20), and in 1916 a reservation of about 2,800,000 acres was set apart (R. 28).

In 1917 this was reduced on petition of the Arizona Legislature and other bodies to 2,443,000 acres by taking out a strip from East to West through the center in order to leave a passage for persons and cattle. This reservation was made on the petition of the Papagos themselves and now covers most of the Papago country. (R. 304, 308.) Almost all of the Indian occupancy is therefore protected by the reservation and any part lying within the withdrawn strip is protected by the general rule announced by the Department of the Interior to grant no title to public lands in Indian occupancy. (R. 271, 274.)

Upon consideration of the matters herein set forth the Supreme Court of the District of Columbia filed an opinion (R. 90) ordering the dismissal of the bill. In this opinion the court said, as to the motion to dismiss (R. 91):

The questions of fact raised by the motion were the subject of considerable evidence, pro and con, adduced at the final hearing, and claimed applicable rules thereto invoked and argued, and separate briefs dealing with this phase of the case were submitted.

It is clear, in the opinion of the Court, that the grounds of the motion and the opposition thereto, were sufficiently developed in the trial of the case on the merits, to admit of a determination of the questions raised thereby, in the conclusions which the Court has reached on the whole case as presented by the pleadings and evidence, and which are the basis of its decision, and that therefore the motion to dismiss should be overruled.

The remainder of the opinion deals with the source of authority for this suit, the Court "*assuming but without deciding*" that the plaintiff named is a pueblo or municipality, and "*assuming but without deciding*" that it owned and held the lands in common for its inhabitants found that the alleged plaintiff had never authorized the suit, and "did not possess under any law, Spanish, Mexican or United States, or by any custom, usage or tradition, the power" to make the conveyance or grant the power of attorney attempted to be made by Luis (R. 99-100) and which were found to be the basis for this suit, which was brought by and for the benefit of Martin and those claiming by or through him (R. 98-99).

The decision being favorable to the defendants, no appeal was taken by them from the action of the court in denying the motion to dismiss, although the reasons advanced by the court were all directed to matters raised by the motion.

An appeal was taken in the name of the alleged plaintiff pueblo, and was duly allowed by the Court of Appeals for the District of Columbia.

The Court of Appeals in its opinion (R. 423) ruled that the question of authority to bring this suit had been raised in an improper manner, and in addition came too late. On the merits the court, without, so far as the opinion discloses, considering whether the Papagos were in any wise different from recognized Pueblo Indians in New Mexico, held that these Indians had a prescriptive right to the lands involved, which was "subject to recognition by the Government of Mexico," but which, by reason of its never having been recorded, was barred from recognition by the United States because of the provisions in the sixth section of the Gadsden Treaty. The decision below was affirmed.

Again the defendants were faced with an opinion which found important facts and the law squarely contrary to their contentions and beliefs, but which directed that the suit be dismissed, and, of course, no steps seeking a review of the opinion were or could properly have been taken.

This Court in granting certiorari (R. 442) set the matter down for hearing "on the issue as to the existence of authority of counsel who filed the bill to represent complainant."

SUMMARY OF ARGUMENT

The claim of authority of counsel to file this suit rests on the power of attorney signed in 1880. If

that power was void or expired before this suit was commenced, the suit was brought without authority. If the power was revocable, it terminated before the suit was commenced by death of the attorney in fact and by lapse of time, and if there could be any question about that, it would be disposed of by the document filed in the court below signed by the Papago Indians repudiating the power and requesting dismissal of the suit.

The only claim ever asserted that the power was irrevocable is based on the deed from Chief Luis to Hunter in 1880 of an undivided half of the Indian lands. That deed was void because signed without intelligent consent, and under circumstances amounting to fraud; because the Chief who signed it had no authority from the Council of the Tribe; and because it was prohibited by two statutes, one prohibiting agreements by Indians for the payment or delivery of money or anything of value in consideration of services relative to their lands unless approved by the Secretary of the Interior, and the other forbidding any purchase or grant of lands from any Indian Nation or tribe, except under conditions not here complied with.

The want of authority was properly raised by the respondent in the trial court, and, in any event, would be acted on by the court on its own motion.

ARGUMENT

I

AS AN IRREVOCABLE GRANT OF AUTHORITY, THE POWER
TOGETHER WITH THE DEED ACCOMPANYING IT WERE
VOID

The claim of authority for counsel to institute this suit in the name of the Pueblo of Santa Rosa is grounded on the power executed in 1880 by Chief Louis to Hunter. If that power did not authorize the commencement of this suit in 1915, there was no authority for it. If the power was revocable in its nature, the authority to grant it terminated long before the commencement of the suit. The power ran to Hunter. Hunter assumed to substitute Cates. He also made a contract with Martin, granting Martin an interest in the lands, the latter contracting to take steps necessary to establish the Indian title as against the United States and then to partition the land between the Indians and Hunter and his assigns. It is Martin, under the alleged authority granted by Hunter, who, in turn, acted under the supposed authority of the power of attorney of 1880, who employed counsel and directed the institution of this suit.

It is elementary that a power revocable in its nature terminates on the death of the agent named. It is also clear that if the power was revocable in its nature, its authority lapsed through failure to exercise it for an unreasonable period of 35 years. If revocable in its nature, even though in force when

the suit was brought, its authority was ended when 181 of the 195 adult male inhabitants of the Indian villages involved signed a document, filed in court, repudiating the power and asking dismissal of the suit. Indeed, no serious claim could be made that any authority existed for the commencement of the suit unless the power, in connection with the deeds made at the same time, was irrevocable.

The attempt of counsel to find authority for the institution of the suit in the knowledge and acquiescence of the Indians since it was commenced is so unsubstantial and so entirely unsupported by evidence as not to justify consideration. The trial court found that "By the clear weight of evidence on this point, it is apparent that there was practically no knowledge at all of the institution of this suit by the Papago Indian inhabitants of the region in question, until long after it had been instituted, and no evidence that they ratified the act." (R. 99.) When called upon to disclose their authority in the first instance, counsel pointed to the power of 1880 and the deeds in connection therewith as their sole warrant, and the record discloses no other possible ground on which the authority could be based.

It is not worth while to take space to examine the technical rules relating to powers coupled with an interest.

Any contention that the power in this case was irrevocable must be based on the conveyance of 1880 by Chief Luis to Hunter of an undivided one-

half of lands alleged to be claimed by the Indians. There are many plain reasons why that conveyance was void.

In the first place, it was executed under circumstances showing a lack of intelligent consent by the ignorant Indians who signed it, and it was so entirely improvident that it could not be sustained in any court of law or equity. The circumstances attending the execution of these papers have been as fully inquired into in this case as they ever can or will be, and on the record, as it stands, no court could hesitate for one moment to treat the conveyance as obtained by fraud and imposition. The deed purported to convey an undivided one-half of all the lands the Indians occupied or could claim. It was wholly without consideration, except for such agreement on the part of Hunter as may be implied that he would take the necessary proceedings in behalf of the Indians to establish their claims.

Another reason for the invalidity of the conveyance is found in the want of authority of the Chief who signed it. Whether there be a legal entity or Pueblo of Santa Rosa, or merely a tribe of Papagos, the result is the same. The evidence establishes conclusively that no Papago Chief had authority to do any act or take any step as vital to the interests of the Indians as a conveyance of an undivided one-half of the lands occupied by them without authority from a Council of the Tribe, and the evi-

dence is practically conclusive that no such Council was ever held and that no such authority was ever given.

Another reason for the invalidity of the attempted conveyance is that it was prohibited by statutes of the United States.

The Papagos have been continuously treated as wards of the Government by the legislative and executive branches. Even if Santa Rosa be a Pueblo, the United States may regulate or prohibit the conveyance of its lands. *United States v. Candelaria*, 271 U. S. 432.

Section 2116 of the Revised Statutes reads as follows:

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

Section 2103, Revised Statutes (Sec. 3, Act of Mar. 3, 1871, c. 120, 16 Stat. 544, 570, as amended) provides:

No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians rela-

tive to their lands, * * * unless such contract or agreement be executed and approved as follows:

Here follow conditions that it shall be in writing, that it shall be executed before a judge of court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs, and that it shall comply with various other conditions. None of these was fulfilled in this case.

The power of attorney seems to have been at one time exhibited to the Interior Department and a Chief Clerk of the Department approved it as to form. There is nothing in the record to show that the Interior Department then or thereafter knew of the deeds or that Chief Luis had not received authority from a Council of the Tribe. There is no suggestion that at the time of the execution of this power and of the conveyances accompanying it the Papagos were citizens of the United States.

The whole case is well summarized in the opinion of the trial court (R. 90-100), whose findings are amply supported by evidence.

II

THE QUESTION OF COUNSEL'S AUTHORITY WAS PROPERLY RAISED IN THE TRIAL COURT, AND, IN ANY EVENT, MAY BE CONSIDERED BY THE COURT ON ITS OWN MOTION

The Court of Appeals seems to have misunderstood the proceedings in the Supreme Court of the District. The method of raising the question as

to the authority of counsel suggested as appropriate by the Court of Appeals was, in fact, followed. It is true that before raising the question the defendant interposed a motion to dismiss grounded on the insufficiency of the complaint. (R. 11.) It took no other step before challenging counsel's authority. When the case was remanded to the Supreme Court of the District, with leave to the defendant to interpose answer, it immediately filed a motion, supported by affidavit, for dismissal of the suit on the ground that counsel had no authority from the alleged Pueblo to institute it. (R. 33.) The necessity of issuing a rule to show cause was dispensed with because counsel appeared in opposition to the motion and argued it.

If there was error in deferring the final consideration and decision of the motion until after hearing on the merits, it was not the fault of respondent, but the action of the trial court (R. 87-89); and since the question of the validity of the power of attorney and the giving of conveyances was so closely interwoven with the circumstances and organization of the Papagos, and the question whether there was a Pueblo or legal entity, the trial court acted wisely in deferring its action on the question of authority. Furthermore, the trial court, the Court of Appeals, and this Court may properly consider such a matter, regardless of whether the point is made by a party to the cause. *Gage v. Bell*, 124 Fed. 371; *Clark v. Willett*, 35 Cal. 534; *Standefer v. Dowlin*, 22 Fed. Cas. 13284 a.

In *King of Spain v. Oliver*, 14 Fed. Cas. No. 7814, where the authority of counsel to commence the suit was challenged, it was said (p. 578):

It would be strange, if a court whose duty it is to superintend the conduct of its officers, should not have the power to inquire by what authority an attorney of that court undertakes to sue or to defend, in the name of another—whether that other is a real or fictitious person—and whether its process is used for the purpose of vexation or fraud, instead of that for which alone it is intended. The only question can be, as to the time and manner of calling for the authority, and as to the remedy, *which are in the discretion of the court, and ought to be adapted to the case.* (Italics ours.)

McKiernan v. Patrick, 4 How. (Miss.) 333. Where the record in the case discloses that the suit was instituted by counsel without authority of the plaintiff named, a court may, and should, take cognizance of the situation and dismiss the case. Such a case is moot. The judgment would bind no one, there being only one party, the defendant, present in court. The same reasoning which induces a court to refuse to proceed to formal judgment and to dismiss a moot case on its own motion, leads to the conclusion that a court on its own motion should decline to proceed to formal judgment and should dismiss a case where it affirmatively appears that the plaintiff named never authorized the suit and

will not be bound by the judgment. We confess we cannot understand the attitude of the Court of Appeals in treating the matter as one in which the court has no interest and will not consider unless raised by one of the parties in a particular way.

A different situation exists where a party is actually in the case and the question is whether the counsel who are acting for him have authority to do so. Here, if there be want of authority, there is no plaintiff, and the judgment would be ineffectual. It is inconceivable that where such a situation is disclosed at any point in the litigation a court will not forthwith refuse to proceed further.

If the law has not heretofore been stated just as we have done, it is time it should be.

The suggestion in the opinion of the Court of Appeals and in petitioner's brief that the point respecting authority of counsel to institute the suit is not in the case, because the trial court in its judgment denied a motion to dismiss and the defendants took no appeal from that judgment, is without merit. In the judgment in which it denied the motion to dismiss, the Supreme Court of the District dismissed the bill on the merits. The defendants were given by the judgment all that and more than they were entitled to.

Neither the Court of Appeals nor the brief of counsel for the petitioner point out how a party may sustain an appeal from a judgment in his favor

which grants more relief than he was entitled to. If an appeal had been taken by the defendant from the judgment, the only error which could have been assigned would have been that the dismissal, instead of being on the merits, should have been without prejudice. An appellant with such an assignment of error would not abide long in a court of appeals.

Although the judgment of the Supreme Court of the District dismissing the suit appears to have been a dismissal on the merits (R. 100), the only ground assigned by the court for its decision was want of authority in counsel to bring a suit in the name of the Pueblo of Santa Rosa (R. 99-100). The court should have dismissed the case without prejudice to any suit which may hereafter be commenced by and with the authority of the alleged Pueblo.

If the Papago Indians ever desire to institute a suit to test the existence of the Pueblo and the nature of their title in these lands, they should not be embarrassed by a plea of *res adjudicata*, with the consequent necessity of then establishing that the name of the Pueblo was used without authority.

CONCLUSION

The case should be remanded to the Supreme Court of the District with instructions to dismiss the bill of complaint on the ground that counsel who instituted the suit had no authority to do so,

and without prejudice to any suit which may hereafter be commenced by and with the authority of the alleged Pueblo of Santa Rosa.

Respectfully submitted.

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B. M. PARMENTER,
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D. V. HUNTER,
Attorney.

JANUARY, 1927.

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SUPREME COURT OF THE UNITED STATES.

No. 511.—OCTOBER TERM, 1926.

The Pueblo of Santa Rosa, Petitioner,

vs.

Albert B. Fall, Secretary of the Interior, and William Spry, Commissioner of the General Land Office.

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

[February 21, 1927.]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

Our order granting the writ of certiorari in this case directed a hearing on the issue as to the existence of authority of counsel who filed the bill to represent complainant. That hearing now has been had.

The suit is brought to enjoin respondents from offering, listing or disposing of certain lands in Arizona as public lands of the United States. The case was here before on appeal, *Lane v. Pueblo of Santa Rosa*, 249 U. S. 110, and was remanded to the District supreme court with directions to overrule a motion to dismiss on the merits and allow defendants to answer the bill. After receipt of the mandate, an answer was filed denying the allegations of the bill and alleging, among other things, that the so-called pueblo had never authorized the suit or ratified or approved the acts of the attorneys in bringing or prosecuting it. And upon that ground, a motion to dismiss, supported by affidavits, was filed at the same time. After a hearing upon the motion, the trial court postponed a decision until final hearing; and the taking of testimony was proceeded with, much of it relating to the issue now before this court.

The record is a long one, but the pertinent facts may be shortly stated. About the year 1880, deeds were drawn and acknowledged by a number of Indians, conveying to one Hunter as trustee an interest in the lands, grants and privileges of certain named

villages. Among these deeds was one which purported to be made by "Luis, Captain of the Village or Pueblo of Santa Rosa," for himself and inhabitants of that village and others, and to convey an undivided half interest in 720 square miles of land. At the same time, powers of attorney were executed by the various grantors. The only one with which we are here concerned is that given by Luis, the terms of which, we assume for present purposes, were sufficient to authorize Hunter to bring and maintain a suit like the present. It granted to Hunter powers of delegation, substitution and revocation, and recited that as it was "accompanied with an interest . . . it is hereby made irrevocable." While Hunter was authorized to render services in establishing the claim of the Indians to the lands, it does not appear that he agreed to do so unless by implication merely; nor does it appear that there was any other consideration for the conveyance.

In 1911, Hunter entered into contracts with one Martin, by which the latter was to undertake to establish the Indian title and make certain cash payments in consideration of the conveyance to him of an undivided three-fourth's interest in the lands which would fall to Hunter upon a partition between himself and the Indians. The same year, and long after the death of Luis, Hunter executed a delegation of his powers to one Cates. Hunter died in 1912, and this suit was brought in 1914 by a firm of lawyers of which Cates was a member. Cates died in 1920, several years before the motion to dismiss was heard in the court of first instance.

The Luis deed was not recorded in the counties where the lands are situated until 34 years after its execution and two years after the death of Hunter, the grantee. The delay is not explained. Careful and comprehensive inquiries, conducted among the Indians over a period of several years, failed to disclose anyone who knew of any authority from the Indians to bring or maintain the suit. Among them were contemporaries of Luis but none had ever heard of the deed or the power; and it is made clear that these instruments properly could not have been executed or any interest of the Indians conveyed without previous deliberation for that purpose on the part of the Indians in council, and that no such council was ever assembled. The evidence further shows that no suit properly could have been brought without the prior consent of the Indians in council and that no council for that purpose was ever assembled. The attitude of the government seems to have been that the lands claimed are

public lands, subject only to the ordinary right of Indian occupancy.

Early in the year 1922, after consideration, 181 of the 195 adult male inhabitants of the villages said to form the Pueblo of Santa Rosa signed a petition declaring that none of them knew about the suit until after it was brought or gave anyone a right to bring it, and that none of them approves of it or wants it to go on, and requesting "that this suit which we do not want, and with which we have nothing to do, be dismissed."

The court of first instance, assuming without deciding that the plaintiff was a pueblo as set forth in the bill and owned the lands in question, held that it had never authorized the bringing or maintenance of the suit and that it did not have under any law or by any custom, usage or tradition the power to make the conveyance or power of attorney in question, and entered a decree dismissing the bill. The court of appeals disapproved the holding of the court of first instance upon the question of authority to bring the suit, on the ground that a challenge to the right of counsel to appear is a preliminary matter, to be disposed of before proceeding to the merits; but affirmed the order of dismissal upon the merits. 12 F. (2d) 332. In this we think that court erred.

The question as to the authority of counsel was raised by motion to dismiss filed with the answer. There was a hearing upon the motion, but the trial court of its own accord postponed a decision upon it until final hearing on the merits, an order clearly within its discretion. Whether, as a matter of practice, the challenge to the authority of counsel was seasonably interposed, it is not important to decide, for in any event, the trial court, or this court, has power, at any stage of the case, to require an attorney, one of its officers, to show his authority to appear. In *The King of Spain v. Oliver*, 2 Wash. C. C. 429, 430, Mr. Justice Washington, sitting in the circuit court, said: ". . . it would be strange, if a Court whose right and whose duty it is to superintend the conduct of its officers, should not have the power to inquire by what authority an attorney of that Court undertakes to sue or to defend, in the name of another—whether that other is a real or fictitious person—and whether its process is used for the purpose of vexation or fraud, instead of that for which alone it is intended. The only question can be, as to the time and manner of calling for the authority, and as to the remedy, which are in

the discretion of the Court, and ought to be adapted to the case." See also, *W. A. Gage & Co. v. Bell*, 124 Fed. 371, 380; *McKiernan et al. v. Patrick et al.*, 4 How. (Miss.) 333, 335; *Clark v. Willett*, 35 Cal. 534, 539-541; *Miller v. Assurance Co.*, 233 Mo. 91, 99; *Munhall v. Mitchell*, 178 Mo. App. 494, 501; *S. P. Savings Union v. Long*, 123 Cal. 107, 113.

To justify the conclusion that there was no authority to bring or maintain the suit really needs nothing beyond the foregoing short recital of the facts. That Luis was without power to execute the papers in question, for lack of authority from the Indian council, in our opinion is well established. Indeed, there is no evidence to the contrary worthy of serious consideration. The rights of Indians, unlettered and under national wardship, are here involved, and a deed purporting to convey their half interest in an enormous tract of country, without consideration aside from some indefinite and doubtful promise to establish their claim against the government, is upon its face so improvident as to call for affirmative proof of authority of the clearest kind. Instead of this we have no affirmative evidence of a substantial character and the suspicious circumstance of long unexplained delay in recording the deed and power and in bringing the suit.

But wholly aside from this, the conveyance and the power were both void by force of §§ 2103 and 2116 Revised Statutes. The first of these sections provides that any agreement with any tribe of Indians for the payment or delivery of anything of value in present or in prospective in consideration of services for such Indians relative to their lands is void, unless, among other requirements, the agreement is in writing, executed before a judge of a court of record, bears the approval of the Secretary of the Interior and the Commissioner of Indian Affairs endorsed upon it, and contains the names of all parties in interest, their residence and occupation; and further that "if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically." Section 2116 declares that no "conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." These sections apply here whether the Indians concerned are to be classified as nomadic or Pueblo Indians. *United States v. Candelaria*, 271 U. S. 432, 441-442. None

of their requirements can be dispensed with, and it does not appear that in respect of most of them there was even an attempt to comply. See and compare, *Green v. Menominee Tribe*, 233 U. S. 558, 568; *Lease of Indian Lands for Grazing Purposes*, 18 Op. Atty. Gen. 235, 237; *Indian Contract, Id.*, 497.

We agree with the conclusions of the court of first instance, but are of opinion that the dismissal should have been not upon the merits, but without prejudice to a suit if properly brought. The decrees of both courts, therefore, are erroneous, and the cause must be remanded to the court of first instance with directions to dismiss the bill, on the ground that the suit was brought by counsel without authority, but without prejudice to the bringing of any other suit hereafter by and with the authority of the alleged Pueblo of Santa Rosa. Other grounds appearing from the record, which would lead to the same result, we pass without consideration.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.